

## **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANTHONY MANGANIELLO,

Plaintiff,

Index No.

-against- 07 CIV 3644 (HB)

THE CITY OF NEW YORK, DET. LUIS AGOSTINI,  
individually and as a New York City Police  
Detective, SHAWN ABATE, individually and as  
a New York City Police Detective, DEREK  
PARKER, individually and as a New York City  
Police Detective, LT. HENRY SCOTT,  
individually and as a New York City Police  
Lieutenant, P.O. ALEX PEREZ, individually  
and as a New York City Police Officer, P.O.  
MIRIAN NIEVES, individually and as a New  
York City Police Officer, MICHAEL PHIPPS,  
individually and as the Commanding Officer  
of the 43rd Precinct, JOHN MCGOVERN,  
individually and as a New York City Police  
Sergeant, ROBERT MARTINEZ, individually and  
as a New York City Police Detective, GERYL  
MCCARTHY, individually and as a New York  
City Police Inspector,  
Defendants.

-----X  
December 20, 2007  
10:25 a.m.

DEPOSITION of DET. LUIS AGOSTINI



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14

16

1 Agostini  
 2 **Q Did you ever work with a**  
 3 **confidential informant in connection with**  
 4 **the Acosta investigation?**  
 5 A Not my confidential informant,  
 6 no.  
 7 **Q I'm not going to ask for the**  
 8 **identity of any confidential informants, but**  
 9 **what was your experience working with**  
 10 **confidential informants generally?**  
 11 A When I was in narcotics I had a  
 12 couple of CI's we call them, and some of  
 13 them give you good information and some of  
 14 them don't.  
 15 **Q As a detective working with a**  
 16 **CI, what responsibility if any did you have**  
 17 **to verify the information given as to**  
 18 **whether it was good or not?**  
 19 MS. FROMMER: Objection. You  
 20 can answer.  
 21 A You can do recon or you can do  
 22 further interviews.  
 23 **Q What's recon?**  
 24 A Okay, that's basically go to the  
 25 area, they don't know who you are, and try

15

1 Agostini  
 2 to find out if this is – you know, if they  
 3 are selling crack or something else, what he  
 4 is not saying, what he is saying. Just try  
 5 to verify that they are selling that product  
 6 at that specific location.  
 7 **Q In other words, does recon**  
 8 **involve attempting to corroborate what a**  
 9 **confidential informant has told you?**  
 10 A Yes.  
 11 **Q When you say further**  
 12 **investigation, what do you mean by that?**  
 13 A What do you mean?  
 14 **Q You said you can do recon and**  
 15 **further investigation. What do you mean by**  
 16 **further investigation?**  
 17 A Sometimes interview other people  
 18 that have been arrested at that specific  
 19 location.  
 20 **Q Is that also another step to**  
 21 **attempt to corroborate what information a**  
 22 **confidential informant has given you?**  
 23 A Yes.  
 24 **Q As one working with confidential**  
 25 **informants, did you keep what's called a CI**

1 Agostini  
 2 file?  
 3 A Yes.  
 4 **Q As part of working with a**  
 5 **confidential informant, what documents**  
 6 **generally are kept in a CI file?**  
 7 A I can't remember.  
 8 **Q Would you do a background check**  
 9 **on a particular confidential informant to**  
 10 **see what crimes he had been involved in in**  
 11 **the past?**  
 12 A Yes.  
 13 **Q Does the level of criminal**  
 14 **activity affect your judgment as to a**  
 15 **confidential informant's reliability?**  
 16 MS. FROMMER: Objection. You  
 17 can answer.  
 18 **Q In general.**  
 19 A Rephrase that.  
 20 **Q What I am looking for, sir, what**  
 21 **factors if any do you look for in a**  
 22 **confidential informant's background to**  
 23 **determine whether or not they are**  
 24 **believable?**  
 25 A Most confidential informants

17

1 Agostini  
 2 have a criminal history. So we are not  
 3 looking for a Boy Scout or whatever, but you  
 4 try to find out whether let's say if the  
 5 certain person there that's dealing drugs,  
 6 has he had any arrest connection to that  
 7 person.  
 8 **Q Is there any system for putting**  
 9 **up a red flag if a confidential informant**  
 10 **gives you information that is false?**  
 11 MS. FROMMER: Objection. You  
 12 can answer.  
 13 **Q In the calendar year 2001, was**  
 14 **there any procedure to determine, to put up**  
 15 **a red flag so to speak when a confidential**  
 16 **informant gave you false information?**  
 17 MS. FROMMER: I am going to  
 18 object. That he had used when he was  
 19 in narcotics. He was not in narcotics  
 20 in February of 2001.  
 21 MR. JOSEPH: I'll rephrase the  
 22 question.  
 23 **Q In your experience, sir, working**  
 24 **with confidential informants, was there any**  
 25 **procedure by which you put a red flag so to**

5 (Pages 14 to 17)



18

1 Agostini  
2 speak if it turned out that a confidential  
3 informant had given you false information?  
4 MS. FROMMER: Objection. You  
5 can answer if you can.  
6 A Basically if he gives you once  
7 or twice bad information what your  
8 supervisor would say is drop him. You just  
9 drop him, and that's it, he won't be your  
10 confidential informant any more.  
11 Q Is that a procedure you had  
12 followed in general when working with  
13 confidential informants?  
14 MS. FROMMER: Objection. You  
15 can answer.  
16 A Well, that procedure I've never  
17 done.  
18 Q Was that a procedure that you  
19 would follow in the event that a  
20 confidential informant gave you false  
21 information?  
22 MS. FROMMER: Objection. You  
23 can answer.  
24 A Yes.  
25 Q On February 12, 2001, did you

1 Agostini  
2 become involved in the investigation into  
3 the homicide of Albert Acosta?  
4 A Yes.  
5 Q How did you become so involved?  
6 A I was the assisting investigator  
7 for Detective Shawn Abate.  
8 MS. FROMMER: A-B-A-T-E.  
9 Q And were you partnered up so to  
10 speak with Abate that day?  
11 MS. FROMMER: Objection. You  
12 can answer.  
13 A Yes.  
14 Q How did you learn of the  
15 homicide of Albert Acosta initially?  
16 A Initially, I was at the 43rd  
17 Precinct, and I'm not sure whether it was a  
18 call from the station house downstairs or it  
19 was by radio, but we were informed that a  
20 1013 was going on at Parkchester.  
21 Q 1013 is an officer down or  
22 officer in peril?  
23 A Or officer in danger, yes.  
24 Q What other information was  
25 conveyed to you in that initial

20

1 Agostini  
2 transmission?  
3 A I believe, but I can't remember,  
4 it was someone in uniform, something like  
5 that, someone in uniform.  
6 Q Was there any indication on the  
7 initial transmission that it was an SPO,  
8 special patrol officer, or Parkchester  
9 security officer?  
10 A No, we did not know that.  
11 Q At some time did you learn that?  
12 A I guess when we got to the  
13 scene, yes.  
14 Q Sir, is it your testimony that  
15 there was no subsequent transmission over  
16 the radio indicating that the person who was  
17 in trouble on the 1013 was actually a  
18 Parkchester security officer?  
19 MS. FROMMER: Objection. You  
20 can answer.  
21 A I can't remember that.  
22 Q Sir, as you sit here right now,  
23 do you have any recollection as to whether  
24 there was a subsequent transmission after  
25 that first transmission identifying the

21

1 Agostini  
2 individual involved in the 1013 as a  
3 Parkchester security officer?  
4 MS. FROMMER: Objection. You  
5 can answer.  
6 A Okay, as far as transmission I  
7 don't know, but I know when I got to the  
8 scene that's when I learned.  
9 Q Did you have a radio on while  
10 you were en route to the scene?  
11 A Yes.  
12 Q Who did you arrive at the scene  
13 with?  
14 A Detective Ramirez.  
15 Q What information were you given  
16 at the scene?  
17 A I believe at the scene we were  
18 given that it was a Parkchester security  
19 person down, and that he was taken to Jacobi  
20 Hospital.  
21 Q At the point in time you  
22 arrived, was the victim already removed?  
23 A Yes.  
24 Q And who gave you this  
25 information?



22

2

1 Agostini  
 2 A I can't say for sure, but I  
 3 believe it was Detective Abate.  
 4 Q Was Detective Abate already on  
 5 the scene prior to your arrival?  
 6 A Yes.  
 7 Q When you arrived at the scene,  
 8 were you given any other information beside  
 9 what you just told us?  
 10 MS. FROMMER: When he first  
 11 arrived at the scene?  
 12 MR. JOSEPH: Yes.  
 13 A No, just basically that me and  
 14 my partner, Detective Ramirez, we were going  
 15 to Jacobi Hospital to see if the victim was  
 16 speaking.  
 17 Q And immediately after arriving  
 18 at the scene, did you then leave and go to  
 19 Jacobi Hospital?  
 20 A A couple of minutes after, yes.  
 21 Q Who did you go to Jacobi  
 22 Hospital with?  
 23 A Detective Ramirez.  
 24 Q At this point when you go to the  
 25 hospital, are you made aware of any

23

1 Agostini  
 2 suspects?  
 3 A No.  
 4 Q How long were you at the  
 5 hospital?  
 6 A Approximately 30 minutes maybe.  
 7 Q Do you have a recollection of  
 8 what time you initially arrived at the scene  
 9 of Acosta's homicide?  
 10 A No.  
 11 Q Are there any records which  
 12 would indicate when you actually arrived?  
 13 A If there was a DDS maybe.  
 14 Q Did you keep a memo book?  
 15 A Yes.  
 16 Q In that memo book did you jot  
 17 down times?  
 18 A We don't keep memo books, I'm  
 19 sorry.  
 20 Q Did you keep a spiral book?  
 21 A Yes.  
 22 Q Aside from a spiral book, did  
 23 you keep any other type of documentation  
 24 that would document what you do during the  
 25 course of the day?

1 Agostini  
 2 Just on the spiral book.  
 3 Q What happened to that spiral  
 4 book at the end of February 12, 2001?  
 5 A It was missing with the other  
 6 documents.  
 7 Q On February 12, 2001, was it  
 8 missing?  
 9 A No.  
 10 Q When did it go missing?  
 11 A It went missing -- the last time  
 12 I saw was something like January, around  
 13 approximately January, February of 2003, and  
 14 that's when I was in the 43rd squad, and  
 15 then I got transferred over to the deputy  
 16 commissioner's office.  
 17 Q I just asked you when it went  
 18 missing.  
 19 A I can't tell you.  
 20 Q At the end of the day on  
 21 February 12, 2001, what did you do with that  
 22 spiral notebook?  
 23 A I kept it with my records.  
 24 Q What other records were with  
 25 that spiral notebook?

25

1 Agostini  
 2 Just spiral notebook, basically  
 3 the spiral notebook.  
 4 Q Were there any other records  
 5 kept with the spiral notebook?  
 6 A I can't remember what other  
 7 records.  
 8 Q Where did you keep those  
 9 records?  
 10 A In my desk.  
 11 Q Let's step back to February 12,  
 12 2001. After you left Jacobi Hospital, where  
 13 did you go?  
 14 A I believe we went back to the  
 15 scene.  
 16 Q And did you speak to anybody  
 17 when you got to the scene?  
 18 A I don't remember who we spoke to  
 19 when we got to the scene, but I remember us  
 20 interviewing someone.  
 21 Q Who did you interview?  
 22 A It was a prior dispute that  
 23 happened that morning that Parkchester  
 24 responded to. So we just went up there, and  
 25 we interviewed the residents there.

7 (Pages 22 to 25)

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1 Agostini  
 2 **Q Who told you to go to that**  
 3 **dispute?**  
 4 **A I can't remember.**  
 5 **Q Do you know why you went to that**  
 6 **dispute?**  
 7 **A To interview, just in case, you**  
 8 **know, maybe they know who did this.**  
 9 **Q Did you go to apartment 5E at**  
 10 **1700 Metropolitan Avenue or Oval?**  
 11 **A Yes.**  
 12 **Q What was your understanding of**  
 13 **why you were going there?**  
 14 **A Basically to interview the**  
 15 **residents there that they had a prior**  
 16 **dispute early in the morning and that**  
 17 **Parkchester security responded to it.**  
 18 **Q At this point, was it your**  
 19 **suspicion that maybe someone involved in**  
 20 **that earlier dispute had done this to Mr.**  
 21 **Acosta?**  
 22 **A That could be a possibility.**  
 23 **Q Sir, that morning, did you go to**  
 24 **the apartment 5E to verify whether or not**  
 25 **Mr. Manganiello, Anthony Manganiello, had**  
 27

1 Agostini  
 2 **been there earlier that morning?**  
 3 **A No, not specifically him.**  
 4 **Q Did you go there to verify**  
 5 **whether any –**  
 6 **A Yes, Parkchester security, yes.**  
 7 **Q Was there any particular member**  
 8 **of Parkchester security that you went there**  
 9 **to verify their attendance?**  
 10 **MS. FROMMER: Objection. You**  
 11 **can answer.**  
 12 **A No, not – well, you know, not**  
 13 **specifically, no. Because – wait a minute.**  
 14 **MR. JOSEPH: Can we have this**  
 15 **marked as, I believe we are up to 10,**  
 16 **right?**  
 17 **MS. FROMMER: I have we are on**  
 18 **10 now. This is going to be 10.**  
 19 **MR. JOSEPH: I have the**  
 20 **interview –**  
 21 **MS. FROMMER: I'm sorry, you're**  
 22 **correct.**  
 23 **MR. JOSEPH: Can you mark this**  
 24 **No. 11.**  
 25 **(Document was marked as**

1 Agostini  
 2 Plaintiff's Exhibit 11 for  
 3 identification, as of this date.)  
 4 **MR. JOSEPH: For the record, it**  
 5 **is also Defendant's Exhibit A, in**  
 6 **evidence, dated 6/28/04. The document**  
 7 **came to me in this condition.**  
 8 **MS. FROMMER: For the record, I**  
 9 **have seen this document, A-I-D in**  
 10 **evidence.**  
 11 **Q I ask you to look at Exhibit No.**  
 12 **11, ask you if you recognize what that**  
 13 **document is?**  
 14 **A It's a radio call.**  
 15 **Q Was this the radio call**  
 16 **concerning the incident at apartment 5E at**  
 17 **1700 Metropolitan and the shooting of Mr.**  
 18 **Acosta on February 12, 2001?**  
 19 **A Yes.**  
 20 **Q Does this document refresh your**  
 21 **recollection as to whether at 10:24 or**  
 22 **thereabouts there was a radio transmission**  
 23 **indicating that a Parkchester security guard**  
 24 **had been shot at a location?**  
 25 **A Transmission that I heard?**  
 29

1 Agostini  
 2 **Q I am asking you if looking at**  
 3 **this document, does it refresh your**  
 4 **recollection?**  
 5 **MS. FROMMER: That one existed**  
 6 **or one that he heard?**  
 7 **MR. JOSEPH: The one that he**  
 8 **heard.**  
 9 **A I can't remember that I heard**  
 10 **one. By looking at this I can see that**  
 11 **there is one, yes.**  
 12 **Q Sir, by looking at this**  
 13 **document, Exhibit 11, do you agree that**  
 14 **there was a radio transmission at 10:24 over**  
 15 **the NYPD system stating that a Parkchester**  
 16 **security guard had been shot?**  
 17 **A At what time?**  
 18 **Q 10:24.**  
 19 **A 10:20, I'm not sure.**  
 20 **Q Somewhere between 10:20 and**  
 21 **10:24; is that correct?**  
 22 **A Yes, yes.**  
 23 **MR. JOSEPH: Let's have this**  
 24 **marked as Exhibit No. 12. For the**  
 25 **record, it's also Bates stamped 795.**

8 (Pages 26 to 29)



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32

1 Agostini  
2 (Document was marked as  
3 Plaintiff's Exhibit 12 for  
4 identification, as of this date.)  
5 **Q** By the say, sir, do you have any  
6 access to the radio transmissions from the  
7 Parkchester security?  
8 **A** Yes.  
9 **Q** And did you learn that a  
10 Sergeant Ohle had made a transmission over  
11 the Parkchester radio stating that one of  
12 his officers or a security officer was down?  
13 **MS. FROMMER:** Objection.  
14 **A** I can't remember that.  
15 **Q** I show you what was marked as  
16 Exhibit No. 12. Do you recognize that  
17 document?  
18 **A** Yes.  
19 **Q** What do you recognize it to be?  
20 **A** The interview with the people at  
21 1700 Metropolitan Avenue.  
22 **Q** Apartment 5E?  
23 **A** 5E.  
24 **Q** Did you ask the people at  
25 apartment 5E at all whether Anthony

1 Agostini  
2 Manganiello had responded to the call?  
3 **A** I didn't know anything about an  
4 Anthony Manganiello at the time.  
5 **Q** Thank you.  
6 Is it fair to say at the point  
7 in time when you arrived back at Parkchester  
8 condominiums Anthony Manganiello was not a  
9 suspect for the shooting of Mr. Albert  
10 Acosta?  
11 **MS. FROMMER:** Objection. You  
12 can answer.  
13 **A** No, he was not a suspect.  
14 **Q** Did you ask the tenant at  
15 apartment 5E whether all the police officers  
16 left together or if they left at different  
17 times?  
18 **MS. FROMMER:** Objection.  
19 **A** I don't remember.  
20 **Q** When you interviewed the  
21 tenants, I believe Miss Fosuaa, F-O-S-U-A-A,  
22 did you take handwritten notes of what they  
23 said?  
24 **A** Like I said, I don't remember.  
25 I could have.

1 Agostini  
2 **Q** Would it be part of your normal  
3 practice to take handwritten notes as the  
4 people are speaking as part of your  
5 investigation in February of 2001?  
6 **MS. FROMMER:** Objection. You  
7 can answer.  
8 **A** Yes.  
9 **Q** In February of 2001, was it your  
10 practice to take down as close as you can  
11 word for word what is said by a witness at  
12 the scene of an investigation?  
13 **MS. FROMMER:** Objection.  
14 **A** Not word for word, no.  
15 **Q** Are the DD5's a summary of your  
16 written notes, or are they word for word?  
17 **MS. FROMMER:** Objection. You  
18 can answer.  
19 **A** Summary.  
20 **Q** Is it possible that there are  
21 things in the written notes that aren't on  
22 your DD5's in general?  
23 **MS. FROMMER:** Objection.  
24 **A** Rephrase it.  
25 **Q** Sir, are there details which at

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33

1 Agostini  
2 the time may not seem significant which are  
3 in your handwritten notes that may not get  
4 on the DD5's?  
5 **MS. FROMMER:** Objection.  
6 **A** Sometimes, yes.  
7 **Q** Would it be fair to say that  
8 usually there is more information in your  
9 handwritten notes that in a DD5, correct?  
10 **MS. FROMMER:** Objection.  
11 **A** Not necessarily, no.  
12 **Q** But would you say that --  
13 **A** Sometimes you write things in a  
14 book and you brief it, but then later on you  
15 remember more by memory what they said, not  
16 specifically that you had it written.  
17 **Q** Is it fair to say that sometimes  
18 you have more information in the handwritten  
19 notes than appear on the DD5's?  
20 **MS. FROMMER:** Objection.  
21 **A** Basically the same I would say.  
22 **Q** Now, do you have any  
23 recollection right now as to whether you  
24 took the handwritten notes of what the  
25 tenants said at 5E at 1700 Metropolitan

9 (Pages 30 to 33)



40

1 Agostini  
2 an inventory form that crime scene will fill  
3 out?  
4 MS. FROMMER: Objection. You  
5 can answer if you know.  
6 A I don't know.  
7 Q Sir, is there an indication on  
8 this form as to what time this form was  
9 filled out?  
10 MS. FROMMER: Objection.  
11 A It says here 12:25.  
12 Q Does it contain Mr. Anthony  
13 Manganiello's pedigree information?  
14 A Yes.  
15 MS. FROMMER: I am just going to  
16 object to this document being called a  
17 form. This is what has been identified  
18 here as a blank piece of paper with  
19 handwritten notes on it. There is no  
20 indication that this is any preprinted  
21 form let alone any preprinted NYPD  
22 form, so I am going to object to that  
23 being referred to as a form. As I  
24 said, it's a blank piece of paper with  
25 handwritten notations.

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1 Agostini  
2 MR. JOSEPH: I'll amend my  
3 question from form to document.  
4 MS. FROMMER: Document is fine.  
5 Q Typically, when crime scene does  
6 gun swap residue tests, do they write down  
7 the person's name and identifying  
8 information who they are taking it from?  
9 MS. FROMMER: Objection. You  
10 can answer if you know what happens.  
11 A Sir, this is the first gun  
12 residue thing that I have seen, you know,  
13 that they were going to do.  
14 Q Sir, does it appear at some time  
15 prior to 12:25 p.m. at the 43rd Precinct  
16 Anthony Manganiello provided his name, date  
17 of birth, address and Social Security  
18 number?  
19 MS. FROMMER: Objection.  
20 A I don't know who he provided it  
21 to.  
22 Q Do you know whether Mr.  
23 Manganiello did in fact provide his name,  
24 address, Social Security number and date of  
25 birth at the 43rd Precinct?

44

1 Agostini  
2 MS. FROMMER: Objection.  
3 A Not to me.  
4 Q Do you know if he provided it to  
5 anybody?  
6 MS. FROMMER: Objection. You  
7 can answer.  
8 A I don't know.  
9 Q What did you say when you first  
10 walked into the door, what if anything did  
11 you say to Anthony Manganiello, and what did  
12 he say to you?  
13 MS. FROMMER: Objection. You  
14 can answer.  
15 A When he first came through the  
16 door I thought in my mind I was interviewing  
17 the victim's partner.  
18 Q By the way, were you aware that  
19 or did you have any knowledge that  
20 Parkchester security officers aren't  
21 partnered up in a traditional sense, they  
22 walk around separately sharing a quadrant?  
23 A No, I don't know that.  
24 MS. FROMMER: Objection.  
25 Q Did you ever become aware of

45

1 Agostini  
2 that on February 12, 2001?  
3 MS. FROMMER: Objection. You  
4 can answer.  
5 A I don't know.  
6 Q What did you say to him, and  
7 what did he say to you?  
8 MS. FROMMER: Objection.  
9 Q What did you say to Anthony  
10 Manganiello, if anything, and what did  
11 Anthony Manganiello say to you?  
12 MS. FROMMER: Objection to the  
13 form. He can answer.  
14 MR. JOSEPH: Off the record.  
15 (Whereupon, a discussion was  
16 held off the record.)  
17 A Basically I was asking him, you  
18 know, like what happened, his pedigree, and,  
19 you know, see if anybody has a problem with  
20 the victim.  
21 Q And did he provide you with his  
22 name?  
23 A Yes, I believe he did.  
24 Q Did he provide you with his  
25 pedigree information?



46

48

1 Agostini  
 2 A No.  
 3 Q What pedigree information did he  
 4 not provide you with?  
 5 A When I asked him, "Where do you  
 6 live?" that's a basic question for anybody  
 7 when you interview, he said, "I don't know."  
 8 And then when I asked him, "What's your  
 9 telephone number?" and he goes, "Unlisted,"  
 10 right.  
 11 Q Did you ask him any additional  
 12 questions?  
 13 A Yes, I asked him about what  
 14 happened to his finger.  
 15 Q What did he say?  
 16 A He said that picking up his  
 17 treadmill I believe, he cut himself picking  
 18 up his treadmill.  
 19 Q Did you have any reason to  
 20 believe he didn't cut his finger picking up  
 21 his treadmill?  
 22 A No.  
 23 Q Did you have any reason to  
 24 believe that his telephone number was not  
 25 unlisted?

47

1 Agostini  
 2 MS. FROMMER: Objection. You  
 3 can answer.  
 4 A Well, this is a police  
 5 investigation. Whether it's unlisted or  
 6 not, I am asking you what's your phone  
 7 number. I mean any other person will give  
 8 you the phone number, will give you the  
 9 address where they live.  
 10 Q Did you at some time prepare an  
 11 arrest report?  
 12 A Yes.  
 13 Q What did it say on the arrest  
 14 report? Is there something that says  
 15 "address" on the form?  
 16 A Yes.  
 17 Q What did you put down under  
 18 that?  
 19 A I don't remember what I put  
 20 down.  
 21 Q Did you put down Mr.  
 22 Manganiello's address?  
 23 A Most likely.  
 24 Q And that information would have  
 25 come from Anthony Manganiello, correct?

1 Agostini  
 2 A I would say that's correct, yes.  
 3 Q That would have been information  
 4 you received on February 12, 2001, right?  
 5 MS. FROMMER: Objection.  
 6 Q Did you receive that information  
 7 from Anthony Manganiello on February 12,  
 8 2001?  
 9 A Yes.  
 10 Q What other information was on  
 11 the arrest report?  
 12 A I can't remember.  
 13 Q What happened to the arrest  
 14 report?  
 15 A It was with the file.  
 16 Q Was that also one of the  
 17 documents which was lost?  
 18 A Yes.  
 19 Q Was Mr. Manganiello's date of  
 20 birth on the arrest report?  
 21 A It could have been. I don't  
 22 remember.  
 23 Q Was Mr. Manganiello's Social  
 24 Security number on the arrest report?  
 25 A If he gives it to me, yes.

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1 Agostini  
 2 Q Did you put down something for  
 3 his Social Security number?  
 4 A It all depends. I mean I can't  
 5 remember that. Some defendants give you  
 6 Social and some don't.  
 7 Q As you sit here right now, do  
 8 you have any recollection as to Anthony  
 9 Manganiello providing you with his Social  
 10 Security number?  
 11 A I don't have any recollection,  
 12 no.  
 13 Q Do you have any recollection as  
 14 you sit here right now as to whether Mr.  
 15 Manganiello provided you with his date of  
 16 birth on February 12, 2001?  
 17 A I have no recollection.  
 18 Q What other information goes on  
 19 an arrest report typically?  
 20 A Basically the charges of what he  
 21 has been either arrested or whatever.  
 22 Q Let's go back.  
 23 After he says he cut his finger  
 24 on the treadmill, what did you say to him  
 25 next?

13 (Pages 46 to 49)

50

52

1 Agostini  
 2 A Well, did he run today.  
 3 Q What did he say?  
 4 A I believe he said no.  
 5 Q Do you have any reason to  
 6 believe he didn't run the day prior?  
 7 A No.  
 8 Q Did you ask him if he ran the  
 9 day prior?  
 10 A No.  
 11 Q Did you ask him if he walked on  
 12 the treadmill as opposed to running?  
 13 A No.  
 14 Q Did you ask him whether someone  
 15 else in his family used a treadmill?  
 16 A No.  
 17 Q Did you ask him who else he  
 18 lived with?  
 19 A I don't remember that.  
 20 Q Did you ask him if maybe he cut  
 21 his finger moving his girlfriend's  
 22 treadmill?  
 23 MS. FROMMER: Objection.  
 24 A No, because I asked him how he  
 25 got that, and he told me how he got it.

51

1 Agostini  
 2 Q Did you believe him?  
 3 A Not -- yes, I guess I believed  
 4 him at the time. Yes.  
 5 Q Let me see if I understand the  
 6 process here. You asked him what his name  
 7 is, and he told you, correct?  
 8 A Yes.  
 9 Q You asked him for his address,  
 10 and he says he doesn't remember, correct?  
 11 A Yes.  
 12 Q But his address wound up on an  
 13 arrest report prepared on February 12, 2001?  
 14 MS. FROMMER: Objection to that  
 15 question.  
 16 A Okay, I believe he says "I don't  
 17 know" regarding to his address, not that I  
 18 don't remember. And as far as the arrest  
 19 report, the address and everything else, if  
 20 it was there, this happened late that night,  
 21 not during the interview.  
 22 Q So then after that, your next  
 23 question to him was what is your telephone  
 24 number?  
 25 A Yes.

1 Agostini  
 2 Q And he indicated that it was  
 3 unlisted, correct?  
 4 A Correct.  
 5 Q What was your next question to  
 6 Anthony Manganiello?  
 7 A I don't remember what is the  
 8 next question.  
 9 Q Do you remember any of the other  
 10 questions you asked him?  
 11 A Did the victim have a problem  
 12 with anybody, or did he have a problem with  
 13 him?  
 14 Q And what was his response?  
 15 A I don't remember what his  
 16 response was.  
 17 Q Did he tell you that he had a  
 18 problem with the victim?  
 19 A No, he didn't say that.  
 20 Q Was there anything that led you  
 21 to believe that Mr. Anthony Manganiello had  
 22 a problem with the victim on February 12,  
 23 2001?  
 24 A No.  
 25 MS. FROMMER: Objection.

53

1 Agostini  
 2 Q What other questions did you ask  
 3 him?  
 4 A I think basically that's it.  
 5 Q What happens after you asked him  
 6 those questions?  
 7 A After I asked him those  
 8 questions, and I would say maybe 15 minutes  
 9 or whatever that he was there, Detective  
 10 Rubin Gonzalez comes in and says that  
 11 Anthony Manganiello's attorney called, and  
 12 asked us not to question him.  
 13 Q What was your impression at that  
 14 point?  
 15 A Then I was suspicious.  
 16 Q Is it fair to say that the fact  
 17 that an attorney called made you suspicious?  
 18 A The fact that he didn't answer  
 19 me, that he told me that he doesn't know  
 20 where he lives and his phone is unlisted, I  
 21 mean most people who we interview, I  
 22 interviewed a whole bunch of people, nobody  
 23 has ever told me that. And the fact that he  
 24 told me that, and all of a sudden an  
 25 attorney calls, yes, it rose my suspicions.

14 (Pages 50 to 53)

54

56

1 Agostini

2 Q Because an attorney had called  
3 and he gave you an evasive answer, did that  
4 somehow in your mind connect him to the  
5 murder of Albert Acosta?

6 MS. FROMMER: Objection. You  
7 can answer.

8 A To me it just rose my suspicion,  
9 that's all.

10 Q At that point in time you  
11 learned that Anthony Manganiello's attorney  
12 had called and directed you not to question  
13 him any further, did that make him, Anthony  
14 Manganiello, a suspect in your mind for the  
15 shooting of Albert Acosta?

16 A No. It just rose my suspicion.  
17 I wasn't the lead detective here. I was  
18 just, you know --

19 Q Prior to the attorney calling,  
20 did you take Anthony Manganiello's memo  
21 book?

22 A Prior to, no.

23 Q Did Shawn Abate take Anthony  
24 Manganiello's memo book prior to the  
25 attorney calling?

1 Agostini

2 A I don't know that.

3 Q Prior to the attorney calling,  
4 did you remove Mr. Anthony Manganiello's  
5 jacket from him?

6 MS. FROMMER: Objection. You  
7 can answer.

8 A No.

9 Q Prior to the attorney calling,  
10 did Shawn Abate remove Anthony Manganiello's  
11 jacket from him?

12 A No.

13 Q Prior to the attorney calling,  
14 did anybody remove Anthony Manganiello's  
15 jacket from him?

16 MS. FROMMER: Objection.

17 A No.

18 Q Prior to the attorney calling,  
19 did anybody remove Anthony Manganiello's  
20 memo book?

21 MS. FROMMER: Objection.

22 A No.

23 Q Now, before the attorney called,  
24 did Anthony Manganiello's brother, Mario  
25 Manganiello, appear at the 43rd Precinct?

1 Agostini

2 A The brother appeared I believe  
3 with the lawyer.

4 Q Now, do you know how many times  
5 the brother appeared at the station --

6 MS. FROMMER: Objection.

7 Q -- that day?

8 A How many times he came into --

9 Q Yes.

10 A Once, twice.

11 Q Is it your testimony that the  
12 first time Mario Manganiello walked into the  
13 43rd Precinct he walked in with a lawyer?

14 MS. FROMMER: Objection. You  
15 can answer.

16 A I believe so.

17 Q Did you discuss the fact that an  
18 attorney called on behalf of Anthony  
19 Manganiello with any other detectives in the  
20 squad?

21 A Not that I know of. I just --  
22 when me and Shawn Abate was in the room and  
23 Detective Rubin Gonzalez told us, that's all  
24 that I knew. Rubin Gonzalez and Shawn  
25 Abate, I didn't discuss it with anybody

55

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1 Agostini

2 else, no.

3 Q And what was your response when  
4 you heard that a lawyer had called?

5 A I had no response.

6 Q Did that in any way anger you?

7 MS. FROMMER: Objection.

8 A No. It just rose my suspicions,  
9 that's all, my suspicion.

10 Q Did you speak with Lieutenant  
11 Scott at all about a lawyer having called  
12 for Anthony Manganiello?

13 A Not that I can remember.

14 Q Do you remember either you or  
15 Lieutenant Scott using the phrase Anthony  
16 Manganiello was lawyered up?

17 MS. FROMMER: Objection.

18 A Not that I know.

19 Q Have you ever heard that term  
20 used?

21 A Yes.

22 Q What does that term mean to you?

23 A Basically when a defendant is  
24 either under arrest or whatever, wants a  
25 lawyer, he doesn't want to speak to the

15 (Pages 54 to 57)



58

60

1 Agostini

2 police.

3 Q And does that in your mind mean  
4 that the person is probably guilty?

5 MS. FROMMER: Objection.

6 A From my mind, I won't say  
7 guilty. I don't know, guilty of something.

8 Q At the point in time that you  
9 stopped questioning Anthony Manganiello on  
10 February 12, 2001, was there any evidence at  
11 all that connected him to the shooting of  
12 Albert Acosta?

13 MS. FROMMER: Objection. You  
14 can answer.

15 A Just that he came from the  
16 scene, and to me, I thought it was his  
17 partner. So I wanted to question him  
18 whether he knew what happened to his  
19 partner.

20 Q My question, sir, was there any  
21 evidence at all on February 12, 2001, at the  
22 point in time you stopped questioning him  
23 that directly connected Anthony Manganiello  
24 to the homicide of Albert Acosta?

25 MS. FROMMER: Objection.

1 Agostini

2 A No, no.

3 Q Sir, on February 12, 2001, did  
4 you have any probable cause to believe that  
5 Anthony Manganiello was involved in the  
6 death of Albert Acosta?

7 MS. FROMMER: Objection. You  
8 can answer.

9 A I didn't have probable cause.

10 Q At some time on February 12,  
11 2001, was Anthony Manganiello arrested?

12 MS. FROMMER: Objection. You  
13 can answer.

14 A He was arrested, yes.

15 Q For what crime was he arrested?

16 A For -- I can't remember, but I  
17 guess murder.

18 Q What was the basis for arresting  
19 Anthony Manganiello for murder on February  
20 12, 2001?

21 A Well, basically the -- well, he  
22 was arrested, what's called -- I can't  
23 remember. The arrest paperwork was just  
24 paperwork saying that -- I forgot the --

25 MS. FROMMER: Explain it, if you

1 Agostini

2 can.

3 A Well, basically if the DA  
4 doesn't approve of arresting someone for  
5 murder, but since he was placed in a cell,  
6 you have to cancel the arrest. That was  
7 basically -- it was a cancelled arrest.

8 Q For an arrest to be cancelled  
9 there was an underlying arrest, correct?

10 A Yes.

11 Q Who made the decision to make  
12 that underlying arrest?

13 A My supervisors.

14 Q Which supervisor?

15 A That I could recall, it was  
16 Inspector Garger.

17 Q Prior to arresting Anthony  
18 Manganiello, did you speak with Lieutenant  
19 Scott at all about effectuating an arrest of  
20 Anthony Manganiello?

21 A Well, sir, I just want to make  
22 it clear, okay. When he was put in a cell  
23 it wasn't my decision, and it wasn't my case  
24 at the time.

25 Q So it was Shawn Abate's decision

59

61

1 Agostini

2 to arrest Anthony Manganiello on February  
3 12, 2001?

4 A I don't know.

5 Q Were you present when Shawn  
6 Abate discussed the Anthony Manganiello case  
7 with any supervisor --

8 MS. FROMMER: Objection.

9 Q -- on February 12, 2001?

10 A Not that I can remember.

11 Q Did you discuss with Shawn Abate  
12 why he was arresting Anthony Manganiello?

13 MS. FROMMER: Objection.

14 A Why? No, I didn't discuss why  
15 he was arresting him.

16 Q Sir, did you say to Shawn Abate,  
17 "There is no probable cause to believe he  
18 was involved in this murder. Why are you  
19 arresting him?"

20 A I didn't say that.

21 MS. FROMMER: Objection.

22 Q Did anybody say that?

23 A I don't know.

24 Q Who else was there?

25 A It was a whole bunch of people

16 (Pages 58 to 61)



62

64

1 Agostini  
2 there.  
3 Q Who else was directly involved  
4 in making this arrest –  
5 MS. FROMMER: Objection.  
6 Q – on February 12, 2001?  
7 A Well, the detective that's going  
8 to make the arrest, the supervisors there,  
9 the ADA. There is a whole bunch of people  
10 involved. I don't know.  
11 Q Was Lieutenant Scott present  
12 when the decision or the discussion about  
13 arresting Anthony Manganiello came up?  
14 A I don't remember.  
15 Q Was Sergeant McGovern present  
16 when the discussion about arresting Anthony  
17 Manganiello came up on February 12, 2001?  
18 MS. FROMMER: Objection.  
19 A I don't remember.  
20 Q Sir, to be a detective do you  
21 have to have a pretty good memory?  
22 MS. FROMMER: Objection. That's  
23 harassment. I am going to instruct him  
24 not to answer that. You are asking him  
25 whether he remembers a conversation

63

1 Agostini  
2 over six years ago. I am instructing  
3 him not to answer. Your question is  
4 harassing.  
5 Q Can you tell me at what time  
6 Anthony Manganiello was placed in a cell?  
7 A I could say an approximate.  
8 Q That's fine.  
9 A Somewhere between I would say  
10 3:00 and 4:00.  
11 Q Is it fair to say that between  
12 3:00 and 4:00 p.m. on –  
13 A Yes.  
14 Q – on February 12, 2001, Mr.  
15 Anthony Manganiello was placed in a cell?  
16 A Approximately, yes.  
17 Q Prior to 3 o'clock p.m. was  
18 Anthony Manganiello free to leave?  
19 A Sir, that was not my decision.  
20 Q I didn't ask you whose decision  
21 it was. I asked prior to 3 o'clock p.m. on  
22 February 12, 2001, was he free to leave?  
23 A I can't tell you that. I don't  
24 know. It's not my decision.  
25 Q Whose decision was it?

1 Agostini  
2 A The investigator in charge,  
3 Detective Abate, or the supervisors.  
4 Q Which supervisors?  
5 A It could be Lieutenant Scott was  
6 there, Inspector Garger that I can remember  
7 and some other people.  
8 Q To the best of your  
9 recollection, what if anything did  
10 Lieutenant Scott do as part of the process  
11 of initiating Anthony Manganiello's arrest?  
12 MS. FROMMER: Objection.  
13 Q If anything.  
14 A I don't remember.  
15 Q Now, at some point, did Mr.  
16 Anthony Manganiello indicate to you that he  
17 wasn't feeling well?  
18 A Yes.  
19 Q What did he say?  
20 A I think something about  
21 shortness of breath or something like that,  
22 but I can't remember.  
23 Q Did EMS come to the precinct?  
24 A Yes.  
25 Q And did they perform an

65

1 Agostini  
2 examination of Anthony Manganiello?  
3 MS. FROMMER: Objection.  
4 A I believe so, yes.  
5 MR. JOSEPH: Let's have this  
6 marked as 14.  
7 (Document was marked as  
8 Plaintiff's Exhibit 14 for  
9 identification, as of this date.)  
10 Q Sir, I'm showing you what has  
11 been marked as Exhibit 14, ask if you  
12 recognize the document?  
13 MS. FROMMER: For the record, I  
14 have seen this document, but this  
15 document has some yellow highlights on  
16 this one. My document does not have  
17 yellow highlights on it. Also, it is  
18 three-whole punched.  
19 MR. JOSEPH: For the record, the  
20 document came to me in this condition.  
21 I attach no significance to either.  
22 Q Do you recognize the document,  
23 sir?  
24 A Yes, I do.  
25 Q What do you recognize it to be?

17 (Pages 62 to 65)



64

1 Agostini

2 A EMS, conferred with EMS.

3 Q Is it a DD5 that you prepared

4 and signed on February 12, 2001, documenting

5 your conversation with EMS?

6 A Yes.

7 Q And what were you told by EMS?

8 A I don't remember.

9 Q Did you document, did you write

10 down in your document you prepared what EMS

11 told you?

12 A I don't remember that either.

13 Q Did you sign this DD5?

14 A Yes.

15 Q Did you type the words that Mr.

16 Manganiello was suffering from shortness of

17 breath?

18 A Yes.

19 Q By the way, was Lieutenant Scott

20 present when you spoke with EMS?

21 A I don't remember.

22 Q Did you report what EMS said to

23 Lieutenant Scott?

24 A I don't remember that either.

25 Q Do you remember any EMS worker

66

1 Agostini

2 saying Anthony Manganiello was fine?

3 A I don't remember that.

4 Q Now, is there any reason Anthony

5 Manganiello couldn't go to the hospital

6 after EMS found he was suffering from

7 shortness of breath at 12:05 p.m. on

8 February 12, 2001?

9 A That's not my decision.

10 Q Whose decision was that?

11 A Whoever the investigator is, he

12 makes -- him and the supervisor make that

13 decision.

14 Q At about 12:05 p.m. on February

15 12, 2001, did Shawn Abate and whoever the

16 supervisor may have been make a decision

17 that Mr. Anthony Manganiello could not go to

18 the hospital?

19 MS. FROMMER: Objection.

20 A I don't know that.

21 Q Were you present when it was

22 discussed whether or not Anthony Manganiello

23 could go to the hospital?

24 MS. FROMMER: Objection.

25 A I don't remember that.

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1 Agostini

2 Q After Mr. Manganiello's attorney

3 called, was Anthony Manganiello's jacket

4 taken from him?

5 A I didn't see anyone take his

6 jacket.

7 Q Do you know if it was done?

8 A Yes, it was done.

9 Q How do you know it was done?

10 A Because I had to voucher the

11 jacket at the end of the day.

12 Q Who provided you with a jacket

13 to voucher?

14 A I don't remember.

15 Q Do you know if Anthony

16 Manganiello's memo book was taken from him?

17 A I believe it was taken, yes.

18 Q Was that memo book vouchered?

19 A I don't think that was

20 vouchered, no.

21 Q Did you consider Anthony

22 Manganiello's memo book to be a piece of

23 evidence?

24 A Yes.

25 Q Is it a procedure in the 43rd

69

1 Agostini

2 Precinct where a piece of evidence had to be

3 vouchered in February of 2001?

4 MS. FROMMER: Objection. You

5 can answer.

6 A Well, it didn't have to be

7 vouchered that same day, because I might

8 look through it during the week to see if I

9 find something else, and once I am through

10 with inspecting the whole memo book then I

11 voucher it.

12 Q Did you ever voucher Anthony

13 Manganiello's memo book?

14 A I don't believe I did.

15 Q Did anybody ever voucher Anthony

16 Manganiello's memo book?

17 MS. FROMMER: Objection.

18 A I don't think so, no.

19 Q How long did it take you to look

20 through the memo book?

21 A I don't know.

22 Q What happened to the memo book

23 after you looked through it or took

24 possession of it?

25 MS. FROMMER: Objection.

70

1 Agostini  
 2 A I put it with my files.  
 3 Q And where is that memo book now?  
 4 A It's missing with the files.  
 5 Q Do you have a recollection of  
 6 what information was contained in Anthony  
 7 Manganiello's memo book?  
 8 A I don't remember that.  
 9 Q Do you have any recollection as  
 10 to whether a sergeant signed off on Anthony  
 11 Manganiello's memo book in the early  
 12 morning?  
 13 MS. FROMMER: Objection.  
 14 A I don't remember that either.  
 15 Q Now, do you know whose decision  
 16 it was to take gunshot residue swaps from  
 17 Anthony Manganiello's hand?  
 18 A I don't know, no.  
 19 MS. FROMMER: Objection.  
 20 Q Did you ever learn what the test  
 21 results were from those gunshot residue  
 22 tests?  
 23 A I believe the district attorney  
 24 told me that it was something like  
 25 inconclusive.

71

1 Agostini  
 2 Q Did she mention the word  
 3 "negative"?  
 4 A I don't remember that.  
 5 Q Prior to speaking with the  
 6 district attorney, did you ever see those  
 7 gunshot residue test results?  
 8 A Yes, I saw them.  
 9 Q When did you see them for the  
 10 first time?  
 11 A I believe when they came to the  
 12 precinct.  
 13 Q When was that?  
 14 A I don't know. I don't remember.  
 15 Q Can you give me an  
 16 approximation?  
 17 MS. FROMMER: Objection.  
 18 A No, I can't.  
 19 Q Did these gunshot residue tests  
 20 come to the precinct prior to Mr.  
 21 Manganiello being arrested in April of 2001?  
 22 A Prior, yes.  
 23 Q What happened to those gunshot  
 24 residue tests after you received them?  
 25 A They were with the file.

72

1 Agostini  
 2 Q Were those also lost?  
 3 A Yes.  
 4 Q Were those gunshot residue tests  
 5 provided to the district attorney's office  
 6 before they were lost?  
 7 MS. FROMMER: Objection. You  
 8 can answer.  
 9 A Like I said, I believe she saw  
 10 them and she relayed to me what they were,  
 11 because it was very confusing to me.  
 12 Q When did the district attorney  
 13 relay the results of the gunshot residue  
 14 tests to you?  
 15 A I don't remember.  
 16 Q Was it shortly before Anthony  
 17 Manganiello's criminal trial in 2004?  
 18 MS. FROMMER: Objection.  
 19 A Yes. Not shortly. It was  
 20 before I guess his arrest, I believe. So in  
 21 April, he was arrested in April.  
 22 Q Sir, did you provide the  
 23 assistant district attorney with the gunshot  
 24 residue tests prior to April of 2001?  
 25 A Prior to?

73

1 Agostini  
 2 Q Yes. Prior to Anthony  
 3 Manganiello's arrest in April of 2001.  
 4 A No.  
 5 Q Did you think that --  
 6 A Do you mean April? You said  
 7 April.  
 8 Q Yes.  
 9 A Yes, she was the one that told  
 10 me the result. Like I say, I couldn't read  
 11 the results. She told me the results.  
 12 Q Why couldn't you read the  
 13 results?  
 14 A Because it was very confusing to  
 15 me.  
 16 Q What was confusing?  
 17 A There was a lot of things there  
 18 that I didn't know. I never seen this  
 19 document before. It's not to say that it  
 20 was positive or negative. There was a whole  
 21 bunch of words there. She told me it was  
 22 inconclusive.  
 23 Q Did you ever call the crime lab  
 24 and ask them what it meant?  
 25 A No.

19 (Pages 70 to 73)





72

74

76

1 Agostini  
2 Q Did you have the ability to call  
3 someone in the crime lab to confer with them  
4 about the result of the gunshot residue test  
5 in 2001?

6 MS. FROMMER: Objection. You  
7 can answer.

8 A I took the district attorney's  
9 word for it.

10 Q Sir, do you have any forensics  
11 training at all?

12 A No.

13 Q Were there people in February of  
14 2001 with the crime lab of the New York City  
15 Police Department who had extensive  
16 forensics training?

17 MS. FROMMER: Objection. You  
18 can answer.

19 A What I believe was this test,  
20 what I believe, was either mailed to another  
21 state to do. The people in crime scene in  
22 New York didn't do it. So for me to ask  
23 them about it, because they didn't do it,  
24 that's why I took the word from the DA's  
25 office.

1 Agostini  
2 Q Could you have called the people  
3 in the other state who did the test and  
4 asked what do these words mean?

5 MS. FROMMER: Objection.

6 A I could have.

7 Q Is there any reason you didn't?

8 A Because I took the word of the  
9 DA's office.

10 Q Prior to his arrest in 2001, did  
11 you provide those gunshot residue tests to  
12 the ADA?

13 MS. FROMMER: Which arrest?

14 MR. JOSEPH: April 2001.

15 MS. FROMMER: You can answer.

16 Q Do you understand my question?

17 A Yes. They looked at it. Did I  
18 provide? Did they make copies. I don't  
19 know whether they made copies or not, but  
20 they saw the document.

21 Q So is it your testimony that  
22 prior to August of 2001 when Anthony  
23 Manganiello was arrested the district  
24 attorney's office had the results of the  
25 gunshot residue test?

1 Agostini

2 MS. FROMMER: April.

3 Q Prior to April of 2001 when  
4 Anthony Manganiello was arrested for the  
5 homicide of Albert Acosta, is it your  
6 testimony that the district attorney's  
7 office had the gunshot residue tests?

8 MS. FROMMER: Objection. Prior  
9 to the date in April when he was  
10 arrested?

11 MR. JOSEPH: Yes.

12 MS. FROMMER: You can answer.

13 A Did they have it?

14 Q Yes.

15 A I know they looked at it because  
16 she told me what it said. I don't know  
17 whether -- did they have it like in their  
18 possession? Yes, they had it in their  
19 possession. I don't know whether they made  
20 copies or not. I know I received that  
21 document back. Whether they have copies or  
22 not I don't know.

23 Q Sir, what's your understanding  
24 of an inconclusive gunshot residue test, the  
25 significance of an inconclusive gunshot

75

77

1 Agostini

2 residue test?

3 A That it could be yes or it could  
4 be no.

5 Q Did you make any attempts to  
6 further investigate why the test itself was  
7 inconclusive?

8 MS. FROMMER: Objection.

9 A No.

10 Q Did you ever take any steps to  
11 learn what type of metals would be on a  
12 person's hand after a 22-caliber handgun was  
13 fired?

14 MS. FROMMER: Objection.

15 A No.

16 Q Now, did you speak with Anthony  
17 Manganiello's brother, Mario, at the point  
18 in time when he first showed up with a  
19 lawyer?

20 A I never spoke to him.

21 Q You never spoke to Mario  
22 Manganiello at all?

23 A No.

24 Q At some point, what did you see  
25 Mario do when he arrived?

20 (Pages 74 to 77)



1 Agostini  
 2 A I believe I saw him, the lawyer  
 3 and the father.  
 4 Q What did you see them do?  
 5 A Just come in and started talking  
 6 to somebody, but they weren't talking to me.  
 7 Q Who were they speaking to, if  
 8 you recall?  
 9 A I don't remember.  
 10 Q What is the next thing you  
 11 recall?  
 12 A The next thing I recall is that  
 13 the brother, the lawyer, and I can't be sure  
 14 of the father, but I know that the lawyer  
 15 and the brother went into the room where we  
 16 had Anthony and they spoke to him in closed  
 17 doors.  
 18 Q What happened next?  
 19 A And then what happened next was  
 20 I can remember, me, Shawn, and I don't know  
 21 who else were outside, we were talking, the  
 22 lawyer comes out and he says, "Was it  
 23 intentional?"  
 24 Q What's the name of this lawyer?  
 25 A I believe his last name is Ross.

79

1 Agostini  
 2 Q Who did he say this to?  
 3 A Well, he basically -- we were in  
 4 a group, so he just said it.  
 5 Q How far were you standing from  
 6 Mr. Ross when he said this?  
 7 A Like this, me, Shawn and then  
 8 some other group, and then he came and he  
 9 says, "Was it intentional?"  
 10 Q Did you understand what he meant  
 11 by that?  
 12 MS. FROMMER: Objection. You  
 13 can answer.  
 14 A In my view?  
 15 Q Yes.  
 16 A In my view, I think that Anthony  
 17 told him that he shot him and he just to  
 18 know was it intentional or was it an  
 19 accidental discharge.  
 20 Q And what happened next?  
 21 A That's it. We didn't even  
 22 respond to what he said. I believe in my  
 23 opinion he found out what he said, and he  
 24 just turned around and walked away.  
 25 Q By the way, did you tell the

1 Agostini  
 2 assistant district attorney that the lawyer  
 3 said that?  
 4 A Of course, yes.  
 5 Q Did you make a DD5 note that the  
 6 lawyer said that to you?  
 7 A I believe so.  
 8 Q Where is that DD5, sir?  
 9 A I don't know. If it's there  
 10 it's there. If not, it's missing with the  
 11 documents.  
 12 Q Would that be an admission in  
 13 your eyes?  
 14 MS. FROMMER: Objection.  
 15 Q Would the fact that Mr.  
 16 Manganiello's lawyer asked you quote unquot  
 17 was it intentional, did you view that as an  
 18 admission of guilt on Mr. Anthony  
 19 Manganiello's behalf?  
 20 MS. FROMMER: Objection.  
 21 A It rose my suspicion even more.  
 22 Q Is that something you would have  
 23 documented somewhere?  
 24 MS. FROMMER: Objection.  
 25 A Well, sir, like I said, I wasn't

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1 Agostini  
 2 the lead detective on this. Shawn Abate  
 3 was. I don't know whether he put it in a  
 4 DD5 or not, because he said it in front of  
 5 both of us. I wasn't the lead detective. I  
 6 don't know if he did it or not, but I  
 7 remember what he said.  
 8 Q Would it be unusual for Mr.  
 9 Abate not to put that in the DD5 anywhere?  
 10 MS. FROMMER: Objection.  
 11 A It all depends. I don't know  
 12 how he is.  
 13 Q Have you worked with Mr. Abate  
 14 in the past?  
 15 A Yes.  
 16 Q Did you consider him to be a  
 17 meticulous or detail-oriented detective?  
 18 MS. FROMMER: Objection.  
 19 A Yes.  
 20 Q Would it be unusual for a  
 21 detailed-oriented detective not to put  
 22 something like a lawyer asking him whether  
 23 it was intentional in a DD5?  
 24 MS. FROMMER: Objection.  
 25 A Like I say, I know what he said.

21 (Pages 78 to 81)

1 Agostini  
 2 A I wasn't there, sir.  
 3 Q At some time, did you speak with  
 4 an assistant district attorney named Dondes,  
 5 D-O-N-D-E-S?  
 6 A Yes.  
 7 Q Was that on February 12, 2001?  
 8 A Yes.  
 9 Q For what reason did you speak to  
 10 ADA Dondes?  
 11 A It was Shawn Abate that was  
 12 speaking with him. Shawn Abate I believe  
 13 was trying to obtain a search warrant for  
 14 Manganiello's vehicle.  
 15 Q Do you know how he went about  
 16 obtaining the search warrant? Did he make  
 17 written notes? Did he just say something  
 18 over the phone?  
 19 MS. FROMMER: Objection.  
 20 A I don't remember.  
 21 Q Did you see him type up any sort  
 22 of affidavit?  
 23 MS. FROMMER: Objection.  
 24 A He was doing something in the  
 25 computer, but I didn't see it.

1 Agostini  
 2 Q When you say computer, at the  
 3 point in time in February of 2001, did the  
 4 43rd Precinct have computers?  
 5 A It wasn't the 43rd Precinct. We  
 6 went to the DA's office.  
 7 Q When did you go to the DA's  
 8 office?  
 9 A I believe, I believe shortly --  
 10 you know, I am thinking. I can't remember  
 11 exactly, but some time that night.  
 12 Q Was that on February 12, 2001?  
 13 A Yes.  
 14 Q And what did you say to the ADA,  
 15 and what did the ADA say to you?  
 16 MS. FROMMER: Objection.  
 17 A I didn't say anything to him.  
 18 Shawn Abate was doing all the talking.  
 19 Q What did you hear Shawn Abate  
 20 say to the ADA?  
 21 A I don't remember.  
 22 Q At the point in time when you  
 23 spoke with the ADA on February 12, 2001, had  
 24 the gunshot residue test come back?  
 25 A Okay, I didn't speak to the DA

1 Agostini  
 2 until late at night when I asked him we  
 3 don't have enough to arrest him. Other than  
 4 that, if anything was spoken with the DA it  
 5 was Detective Abate.  
 6 Q Who said, "We don't have enough  
 7 to arrest him"?  
 8 A That's what the DA said. He  
 9 said it to me, Dondes.  
 10 Q Did ADA Dondes say that in  
 11 response to anything that you said?  
 12 MS. FROMMER: Objection. You  
 13 can answer.  
 14 A No. It happened right after we  
 15 executed the search warrant to the car, and  
 16 we didn't find any weapons or evidence.  
 17 That's when I conferred with him, and he  
 18 says he is not going to authorize the  
 19 arrest.  
 20 Q Let's back up a second.  
 21 Who actually was on a computer  
 22 preparing something to obtain a search  
 23 warrant?  
 24 A I believe it was ADA Dondes.  
 25 Q Did Abate sign any paperwork to  
 97

1 Agostini  
 2 obtain that search warrant?  
 3 MS. FROMMER: Objection.  
 4 A Not that I can remember, but for  
 5 a search warrant you do have to sign  
 6 something I believe, but I don't remember  
 7 that.  
 8 Q Did Abate keep a copy of the  
 9 piece of paper which he signed to obtain a  
 10 search warrant?  
 11 MS. FROMMER: Objection. You  
 12 can answer.  
 13 A That would stay with the file,  
 14 with the investigative file.  
 15 Q The investigative file, is that  
 16 the ADA's file, or is that your case file?  
 17 A Well, I believe ADA's would have  
 18 a copy of that search warrant. They have  
 19 their copy, and then they give us copies.  
 20 Q And what happened to that piece  
 21 of paper, what happened to your copy of  
 22 that, of the search warrant application?  
 23 MS. FROMMER: Objection.  
 24 A That would be Detective Abate's  
 25 copy.



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104

1 Agostini  
 2 **Q Sir, I show you what has been**  
 3 **marked as Exhibit 16 and ask you if you**  
 4 **recognize that?**  
 5 MS. FROMMER: For the record, I  
 6 have seen this document.  
 7 A Yes.  
 8 **Q What do you recognize it to be?**  
 9 A I believe this came from Anthony  
 10 Manganiello's memo book.  
 11 **Q Did it come from his memo book**  
 12 **or from his locker?**  
 13 A I believe his locker, yes, his  
 14 locker.  
 15 **Q Did you search Mr. Anthony**  
 16 **Manganiello's locker at Parkchester on**  
 17 **February 12, 2001?**  
 18 A I didn't search it.  
 19 **Q Were you present when other**  
 20 **people searched it?**  
 21 A Yes.  
 22 **Q Did anybody have a warrant to**  
 23 **search Mr. Anthony Manganiello's locker?**  
 24 A No. I believe it was his  
 25 supervisors that did it. It was nobody from

103

1 Agostini  
 2 NYPD.  
 3 **Q What members if any from NYPD**  
 4 **were present when the locker was being**  
 5 **searched?**  
 6 A I remember I was present. I  
 7 don't know who was with me.  
 8 **Q Was that a note that was given**  
 9 **to you on February 12, 2001?**  
 10 A I don't remember whether I saw  
 11 it that day or the next day, so I can't  
 12 remember whether I saw it that day or not.  
 13 **Q Was Exhibit No. 16 a note that**  
 14 **was given to you either on February 12,**  
 15 **2001, or February 13, 2001?**  
 16 A Well, it was given to me, but I  
 17 don't recall what specific day. Like I  
 18 can't remember.  
 19 **Q Would it be fair to say that**  
 20 **Exhibit 16 was given to you either on the**  
 21 **day of Mr. Acosta's murder or within a few**  
 22 **days thereafter?**  
 23 MS. FROMMER: Objection. You  
 24 can answer.  
 25 A I don't remember what day this

1 Agostini  
 2 was given to me.  
 3 **Q Sir, what did you do with this**  
 4 **note after it was given to you?**  
 5 A What I did with this note? I  
 6 brought it with me to the precinct.  
 7 **Q After you went to the precinct,**  
 8 **what did you do with Exhibit 16?**  
 9 A I kept it with the file.  
 10 **Q Did you ever provide the**  
 11 **assistant district attorney's office with a**  
 12 **copy of this note?**  
 13 A I don't know if I provided them  
 14 with a copy of it. All I know is when I  
 15 made my whole investigative report I gave it  
 16 to them, and they were supposed to make  
 17 copies of everything. I don't know whether  
 18 they did make copies or not, but I gave my  
 19 whole report.  
 20 **Q When did you give them that**  
 21 **report?**  
 22 A That I don't remember a specific  
 23 date.  
 24 **Q Was it before or after the file**  
 25 **was lost?**

105

1 Agostini  
 2 A Oh, it was before.  
 3 **Q Did this note we have, Exhibit**  
 4 **16, raise any suspicion in your mind as to**  
 5 **whether Anthony Manganiello was involved in**  
 6 **the homicide of Albert Acosta?**  
 7 A No, but I can see his frame of  
 8 mind, that's all, not that he killed Albert  
 9 Acosta, but just what he wrote there was his  
 10 frame of mind.  
 11 **Q Tell me what he wrote there so**  
 12 **we have it on the record, and tell me how**  
 13 **that influences, gives you a view as to his**  
 14 **frame of mind.**  
 15 MS. FROMMER: Objection. You  
 16 can answer.  
 17 A It says, "I pray every day that  
 18 I will," I don't know what this word is,  
 19 "have to kill someone." I don't know what  
 20 that is.  
 21 **Q Does that appear to say never?**  
 22 A I am looking at it, and I can't  
 23 see it.  
 24 **Q You can't see a word that**  
 25 **appears to be N-E-V-E-R there?**

27 (Pages 102 to 105)



104

1 Agostini  
 2 A That's a U or V. I'm not sure  
 3 whether that's a U or a V.  
 4 Q Sir, did you ever give testimony  
 5 at a pretrial hearing and under oath that  
 6 said this note said, "I feel like killing  
 7 somebody"?  
 8 A I don't remember that.  
 9 Q Sir, did you give testimony in  
 10 the Bronx Criminal Court on June 18, 2004,  
 11 before Judge Martin?  
 12 A I don't remember that judge, and  
 13 I don't remember the date. You are telling  
 14 me things that I can't remember.  
 15 Q Let me just show you this.  
 16 For the record I am showing the  
 17 witness a copy of the transcript of June 18,  
 18 2004. And sir, does this refresh your  
 19 recollection as to whether you gave  
 20 testimony in the case of the People of the  
 21 State of New York against Anthony  
 22 Manganiello in a pretrial hearing on  
 23 June 18, 2004?  
 24 A Where is my name?  
 25 Q Keep turning the pages, you'll

105

1 Agostini  
 2 see your name.  
 3 MS. FROMMER: Do you want him to  
 4 read the entire transcript?  
 5 MR. JOSEPH: No, of course not.  
 6 MS. FROMMER: If you would like  
 7 to find from the beginning of his  
 8 testimony, and I can perhaps stipulate  
 9 that that is the beginning of the  
 10 testimony.  
 11 Q Sir, I am directing your  
 12 attention to page 11. I ask you if this  
 13 refreshes your recollection as to whether  
 14 you testified on the date we have been  
 15 discussing?  
 16 MS. FROMMER: If we can have him  
 17 start at page ten that identifies him  
 18 as identifying himself.  
 19 MR. JOSEPH: Off the record.  
 20 (Whereupon, a discussion was  
 21 held off the record.)  
 22 A Yes, that's me.  
 23 Q Can you turn to page 21.  
 24 A 21?  
 25 Q Yes.

15)

106

1 Agostini  
 2 By the way, sir, in this  
 3 proceeding, did you swear to tell the truth,  
 4 the whole truth and nothing but the truth so  
 5 help you God?  
 6 A Yes.  
 7 Q On page 21 did you testify that  
 8 you recovered a note from Anthony  
 9 Manganiello's locker saying, "I feel like  
 10 killing somebody"?  
 11 A That's what I testified to.  
 12 Q Is that what the note said?  
 13 A It says "never," I guess. I  
 14 don't know whether I had that note on me  
 15 this day or not. I'm not sure.  
 16 Q Do you know if this note which  
 17 is Exhibit No. 16 was ever provided to  
 18 Anthony Manganiello's defense lawyer?  
 19 MS. FROMMER: Objection. You  
 20 can answer if you can.  
 21 A I wouldn't know.  
 22 Q Did you testify in a pretrial  
 23 proceeding on June 18, 2004, that you  
 24 recovered a note from Mr. Manganiello's  
 25 locker saying, "I feel like killing

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109

1 Agostini  
 2 somebody"?  
 3 MS. FROMMER: Objection. You  
 4 can answer.  
 5 A Well, you know, I remember what  
 6 the note said. I don't know if I had the  
 7 note on me.  
 8 Q Sir, I am asking you did you  
 9 give that testimony?  
 10 A Yes, I did.  
 11 Q And what information were you  
 12 trying to convey?  
 13 A What do you mean convey? I'm  
 14 not conveying anything.  
 15 MS. FROMMER: Objection.  
 16 A I am just trying to say what the  
 17 note said.  
 18 Q Sir, were you trying to provide  
 19 evidence as to Anthony Manganiello's state  
 20 of mind by testifying as to what you  
 21 believe, what you testified the note said?  
 22 MS. FROMMER: Objection.  
 23 A I was trying to say what the  
 24 note said, of course.  
 25 Q Sir, after June 14, 2004, did



1 Agostini  
 2 A That was --  
 3 MS. FROMMER: Objection. Which  
 4 conversation with the ADA?  
 5 MR. JOSEPH: The conversation in  
 6 which the ADA advised that there was  
 7 not sufficient evidence to arrest  
 8 Anthony Manganiello.  
 9 MS. FROMMER: You can answer.  
 10 A After? Say it again, please.  
 11 Rephrase it.  
 12 Q Okay. When you became in charge  
 13 of this investigation, was that before ADA  
 14 Dondes told you there was not sufficient  
 15 evidence to go forward with the arrest?  
 16 A Yes.  
 17 Q When you became in charge of the  
 18 investigation, did you take possession of  
 19 the case folder?  
 20 A The case folder we don't take  
 21 possession of. It could be the next day or  
 22 whenever, but the case became mine right  
 23 after his death. As far as taking,  
 24 gathering the, no, that's not -- that's not  
 25 the way. It doesn't happen.

1 Agostini  
 2 Q How does it happen?  
 3 A Well, you know, everybody brings  
 4 in their DD5's and they put it in a specific  
 5 let's say basket, and at the end of the day  
 6 the case detective takes it with him. So it  
 7 could have been that night, it could have  
 8 been in the morning.  
 9 Q So is it fair to say somewhere  
 10 on either February 12 or February 13 of that  
 11 year you took possession of the case file?  
 12 A Yes.  
 13 Q And what was in the case file at  
 14 the point in time that you took possession  
 15 of it?  
 16 A I don't remember.  
 17 Q Do you recall one way or another  
 18 whether other detectives had given you  
 19 handwritten notes of witness interviews  
 20 taken at the scene of the Acosta homicide?  
 21 MS. FROMMER: Objection. You  
 22 can answer.  
 23 A I don't remember that.  
 24 Q Do you remember whether Anthony  
 25 Manganiello's memo book was in that case

1 Agostini  
 2 folder?  
 3 A I don't remember.  
 4 Q Do you have any recollection as  
 5 you sit here right now looking through  
 6 Anthony Manganiello's memo book?  
 7 A Yes.  
 8 Q Do you have any recollection of  
 9 what the contents were of Anthony  
 10 Manganiello's memo book?  
 11 A No, I can't remember. Just some  
 12 writings, but I don't remember what was in  
 13 it.  
 14 Q Was there anything written in  
 15 there which in any way tied Anthony  
 16 Manganiello to the Albert Acosta homicide?  
 17 MS. FROMMER: Objection.  
 18 A I can't remember, because I  
 19 don't have it in front of me.  
 20 Q When was the last time you saw  
 21 the memo book?  
 22 A Some time that year.  
 23 Q In 2001?  
 24 A Yes.  
 25 Q Do you know one way or another

1 Agostini  
 2 whether there was information which tended  
 3 to show he was not involved in the homicide  
 4 of Albert Acosta in the memo book?  
 5 MS. FROMMER: Objection.  
 6 A I don't remember, because I have  
 7 to look at the memo book. I can't remember.  
 8 Q As the investigation progressed,  
 9 did other detectives provide you with  
 10 handwritten notes of what they had done as  
 11 part of the investigation?  
 12 A Yes.  
 13 MS. FROMMER: Objection. You  
 14 can answer.  
 15 A Yes.  
 16 Q What did you do with those  
 17 handwritten notes when they were received by  
 18 you?  
 19 A They were all put with the file.  
 20 Q From when to when were you  
 21 assigned to the 43rd Precinct?  
 22 A I believe March of 1997 until  
 23 February of 2003.  
 24 Q And during that time period, was  
 25 there a file cabinet where homicide cases

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120

1 Agostini  
 2 were stored?  
 3 A Yes.  
 4 Q And the homicide case folder for  
 5 the investigation of the death of Albert  
 6 Acosta, was that file placed in that file  
 7 cabinet?  
 8 A Not inside, no.  
 9 Q Where was it placed?  
 10 A It was placed in a big box.  
 11 Q And is there any reason the big  
 12 box was not placed in the cabinet?  
 13 A It wouldn't fit.  
 14 Q Was there also a storage room at  
 15 the 43rd Precinct at the time you were there  
 16 whereby boxes relating to homicide  
 17 investigations were stored by year?  
 18 MS. FROMMER: Objection. You  
 19 can answer.  
 20 A By year? There is, there is a  
 21 storage room that is stored by year, yes.  
 22 Q What's that storage room called?  
 23 Does it have a specific name?  
 24 A No. Storage room.  
 25 Q Is there any type of index

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1 Agostini  
 2 that's kept for that storage room?  
 3 MS. FROMMER: Objection.  
 4 A Not that I know of.  
 5 Q Did you ever put the big box  
 6 which you described as a case folder for the  
 7 Acosta homicide into that storage room?  
 8 A I can't remember that.  
 9 Q Is there any reason why you  
 10 wouldn't put the box in that storage room?  
 11 A No, there is no reason.  
 12 Q When we talk about this box you  
 13 are referring to, is it the same thing as a  
 14 case file?  
 15 A Yes.  
 16 Q When was the last time you saw  
 17 the case file into the investigation of the  
 18 Acosta homicide?  
 19 A I believe I saw the case file,  
 20 it was some time in like say approximately,  
 21 that I can remember, January of 2003,  
 22 somewhere around there, January, December,  
 23 whatever, somewhere around that time.  
 24 Q At that time, were you still  
 25 assigned to the 43rd Precinct?

1 Agostini  
 2 A Yes.  
 3 Q And where was it in January of  
 4 2003?  
 5 A It was in a room where they had  
 6 lockers, some of the detectives had lockers.  
 7 Q Was that a room where it was  
 8 sort of a personal locker room for the  
 9 detectives?  
 10 MS. FROMMER: Objection. You  
 11 can answer.  
 12 A Yes, it could be say personal.  
 13 Q Was that considered an  
 14 appropriate place to store a case file?  
 15 A Yes. There was a lot of case  
 16 files other than mine there.  
 17 MS. FROMMER: Objection.  
 18 Q At what time did you leave the  
 19 43rd Precinct?  
 20 A February, 2003.  
 21 Q In February of 2003, did the  
 22 homicide of Acosta get transferred to  
 23 another detective?  
 24 A No, because it was closed.  
 25 Q The case had not gone to trial

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1 Agostini  
 2 yet, correct?  
 3 A Correct.  
 4 Q How is a case categorized as  
 5 closed?  
 6 A When there is an arrest made.  
 7 Q Once an arrest is made is there  
 8 any further work done on the file?  
 9 A No.  
 10 Q After April 20, 2001, when  
 11 Anthony Manganiello was arrested, did you do  
 12 any further work on the case file?  
 13 A No.  
 14 Q In the 43rd Precinct was there a  
 15 place where closed files were stored?  
 16 A Closed files?  
 17 Q Yes.  
 18 A The closed files in the 43rd  
 19 Precinct are everywhere. They could be next  
 20 to my desk, they could be inside a closet.  
 21 There is a lot of files everywhere in the  
 22 43rd Precinct. There is not a specific  
 23 place where there is closed files.  
 24 Q Are closed files also kept in  
 25 that storage room where homicides are

31 (Pages 118 to 121)



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1 Agostini  
2 indexed so to speak by year?  
3 A Yes.  
4 Q Is there any reason that  
5 Acosta's file wasn't put in that storage  
6 room?  
7 A I don't know what reason, why it  
8 wasn't put there.  
9 Q Who put it on top of the locker  
10 in the locker room?  
11 A It wasn't me.  
12 Q Who was it?  
13 A I don't know.  
14 Q When was the last time you had  
15 possession of that file?  
16 A The last time I saw it it was  
17 underneath my desk. Then I came one day and  
18 the squad was like cleaned, it was totally  
19 cleaned, and I said, "What happened to all  
20 the boxes?" Somebody cleaned up, they moved  
21 it next door.  
22 Q Is it your testimony that  
23 someone else put the boxes next door?  
24 A Yes.  
25 Q Sir, did you give testimony at

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122

1 Agostini  
2 the trial of Anthony Manganiello?  
3 A Yes.  
4 Q Did you testify that you put the  
5 box on top of the locker?  
6 A No.  
7 Q I am going to show you page 281,  
8 line 24, going on to the next page. I am  
9 going to ask you to read that, the question  
10 and answer.  
11 A Yes.  
12 Q Sir, in 2004, at the criminal  
13 trial of Anthony Manganiello, did you  
14 testify that you put the case file on top of  
15 the locker?  
16 A Yes. Once I found the locker, I  
17 mean once I found the box on the locker I  
18 took it, and I was looking through it, then  
19 I put it right back on top of the locker.  
20 Q Sir, did you consider the top of  
21 a personal locker to be a safe place to keep  
22 the case file?  
23 MS. FROMMER: Objection.  
24 A Well, there was nowhere else to  
25 put it, and nobody figures that they are

123



124

1 Agostini  
2 going to steal things in a precinct.  
3 Q My question was did you consider  
4 that a safe place in terms of record keeping  
5 to keep that file?  
6 A There was no other place to put  
7 it.  
8 Q Can you give me a yes or no  
9 answer, sir.  
10 A Yes, it is.  
11 Q By the way, when you left the  
12 43rd Precinct, did you alert your  
13 supervisors to that, to the location of this  
14 file?  
15 A No.  
16 Q How was the file marked?  
17 A It had homicide number whatever  
18 it is, and it had my last name on it.  
19 Q Did it have the victim's last  
20 name on it?  
21 A I don't know.  
22 Q Did it have Mr. Manganiello's  
23 last name on it?  
24 A I don't know.  
25 Q Was there any way for anybody to

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1 Agostini  
 2 A Yes.  
 3 Q Do you know what Rosario  
 4 material is?  
 5 A Yes.  
 6 Q What is it?  
 7 A Written statements.  
 8 Q And are these written statements  
 9 that are required to be turned over to a  
 10 defense lawyer defending a criminal case?  
 11 MS. FROMMER: Objection. I'm  
 12 going to instruct him not to answer.  
 13 It calls for a legal definition of what  
 14 Rosario is.  
 15 MR. JOSEPH: I'm asking for his  
 16 understanding.  
 17 MS. FROMMER: You can answer  
 18 what your understanding of Rosario is  
 19 for you.  
 20 A Rosario material for me is  
 21 written evidence that I turn over to the  
 22 DA's office.  
 23 Q Do you know what the purpose of  
 24 that material is?  
 25 A Evidence.

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1 Agostini  
 2 Q And did you ever turn over the  
 3 handwritten statements of the various  
 4 officers who took witness statements to the  
 5 ADA?  
 6 A Sir, my whole file I gave to the  
 7 DA so she can make copies. As far as I am  
 8 giving them from my hand those statements  
 9 that you are saying, no, I give them the  
 10 whole file, and they make whatever copies  
 11 they have to make, whatever is in there they  
 12 are supposed to make.  
 13 Q When did you give the whole file  
 14 to the ADA's office?  
 15 A I can't remember.  
 16 Q Was it before Anthony  
 17 Manganiello was arrested in April of 2001 or  
 18 after?  
 19 A I can't say.  
 20 Q Can you give me any indication  
 21 at all as to when this file was given to the  
 22 ADA?  
 23 A I don't know. I can't guess a  
 24 day.  
 25 Q Sir, do you have a recollection

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1 Agostini  
 2 of physically giving the file concerning  
 3 Anthony Manganiello to a specific ADA?  
 4 A Yes.  
 5 Q What was the name of the ADA?  
 6 A ADA Scaccia.  
 7 MR. JOSEPH: S-C-A-C-C-I-A.  
 8 Q By the way, were the results of  
 9 the gunshot residue test in the box when you  
 10 gave it to ADA Scaccia?  
 11 A Yes.  
 12 Q Now, while at the 43rd Precinct  
 13 back in 2001 through 2004, after an arrest  
 14 had been made but before it had been  
 15 resolved by plea or conviction, was a  
 16 detective still assigned to monitor the  
 17 file?  
 18 A Monitor it, no.  
 19 Q Was a detective still assigned  
 20 to a file for any reason?  
 21 MS. FROMMER: Objection.  
 22 A Only if it's open.  
 23 Q Is it your testimony that after  
 24 a case is closed by arrest the detectives  
 25 have no further responsibility for

129

1 Agostini  
 2 maintaining the file?  
 3 MS. FROMMER: Objection. That's  
 4 not what his testimony was.  
 5 A Only if they go to court they  
 6 have to get the file and bring it to court  
 7 so they can testify, but in between that  
 8 they have no dealings with the file.  
 9 Q Sir, are you aware that there  
 10 still are a number of DD5's that were not  
 11 lost?  
 12 A Yes.  
 13 MS. FROMMER: Objection.  
 14 Q Can you explain to me why or how  
 15 it is that the DD5's were not lost but all  
 16 these other documents were?  
 17 MS. FROMMER: Objection.  
 18 A Well, sir, the copies that you  
 19 received, which is copies of the DD5's, are  
 20 the copies that the DA squad has, okay.  
 21 Like I say, I gave them my file, they have  
 22 to do the copies.  
 23 Q Now, what supervisor if any  
 24 supervised your case investigation into the  
 25 investigation of the murder of Albert

33 (Pages 126 to 129)





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1 Agostini  
2 Acosta?  
3 A I would say it was my lieutenant  
4 at the time, I believe it was Lieutenant  
5 Scott.  
6 Q Now, how often did you speak  
7 with Lieutenant Scott?  
8 MS. FROMMER: About this case or  
9 in general?  
10 MR. JOSEPH: About this case.  
11 MS. FROMMER: You can answer.  
12 A Various times. I can't say. I  
13 can't say a number.  
14 Q What if anything did Lieutenant  
15 Scott do to supervise your work?  
16 A Well, he signs the DD5's.  
17 Q Did you give Lieutenant Scott  
18 every DD5 that was written up on this file?  
19 A Yes.  
20 Q Did you give Lieutenant Scott  
21 all the DD5's concerning Chris Cartone?  
22 A Yes.  
23 Q Did you give Lieutenant Scott  
24 all the DD5's concerning Terrence Alston?  
25 A All, all of my work, all the

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1 Agostini  
2 DD5's goes with whoever supervises there.  
3 Q Did Lieutenant Scott see all the  
4 DD5's concerning Terrence Alston?  
5 MS. FROMMER: Objection.  
6 A I can't say what he saw.  
7 Q Did you give it to him is my  
8 question?  
9 A The thing is I put it in his  
10 desk. He can look at it, another sergeant  
11 can look at it or another sergeant. I can't  
12 say that he is the one that only looks at  
13 this file. It could be the sergeant. The  
14 lieutenant can be off so the sergeant will  
15 look at it.  
16 Q Assuming in the time period  
17 between February 12 and April 20, what  
18 sergeant or sergeants would have looked at  
19 your DD5's if Lieutenant Scott was not  
20 available?  
21 A Whatever sergeant that I had.  
22 Q Who were the sergeants?  
23 A I believe it was Sergeant  
24 McGovern, I believe Sergeant Martinez and  
25 Lieutenant Scott, and I can't remember who

1 Agostini  
2 else.  
3 Q Is that Richard Martinez?  
4 A No.  
5 Q Or Robert Martinez?  
6 A No.  
7 Q Did you ever have a conversation  
8 with Lieutenant Scott or any of your other  
9 supervisors concerning Terrence Alston?  
10 MS. FROMMER: Objection. You  
11 can answer.  
12 A I probably did.  
13 Q Do you have a recollection of  
14 it?  
15 A No.  
16 Q Did Lieutenant Scott ever ask  
17 you if Mr. Alston was quote unquote full of  
18 shit?  
19 MS. FROMMER: Objection. You  
20 can answer.  
21 A Not that I remember, no.  
22 Q Is that something that would  
23 stick out in your mind?  
24 A Yes.  
25 Q Did Lieutenant Scott ever ask

133

1 Agostini  
2 you if any of the other witnesses on the  
3 Acosta homicide were full of shit?  
4 MS. FROMMER: Objection. You  
5 can answer.  
6 A Not that I can remember.  
7 Q Did you give Lieutenant Scott or  
8 the other sergeants the DD5's concerning  
9 Johnny Baker?  
10 A They all go through the  
11 sergeant.  
12 Q Is that a yes?  
13 A And the lieutenant. Well,  
14 somebody has to get them, yes.  
15 Q Did you give either Lieutenant  
16 Scott or the sergeants all the DD5's  
17 concerning Mark Damon?  
18 A Yes.  
19 Q What's a SARRS inquiry,  
20 S-A-R-R-S?  
21 A I believe that has to do with a  
22 gang.  
23 Q And did you ask that a SARRS  
24 inquiry be done in the Acosta homicide case?  
25 A You know what? I can't remember

34 (Pages 130 to 133)

dalco

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1 Agostini

2 information?

3 A I don't remember, sir.

4 Q What information did Sal Miro

5 have?

6 A You know what, there is a DD5

7 there somewhere. I have to look at it. I

8 can't remember by just memory.

9 Q As you sit here right now, do

10 you have any recollection of the substance

11 of the conversation between you and Sal

12 Miro?

13 A I can't say.

14 Q By the way, did you ever ask Sal

15 Miro to handwrite his own statement out?

16 A Sal Miro?

17 Q Correct.

18 A No, I don't think Sal Miro wrote

19 anything.

20 Q As part of your practice in

21 investigations, did you ask people to write

22 out their own statement stating what they

23 knew?

24 MS. FROMMER: Objection.

25 A No, not necessarily.

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1 Agostini

2 Q What factors would influence

3 whether you did that or not?

4 MS. FROMMER: Objection.

5 A Only if they heard or saw

6 themselves that, you know, we would do a lot

7 of canvasses. Canvasses are just

8 interviewing witness, and we don't make them

9 write stuff.

10 Q But what factors if any

11 influence whether or not you are going to

12 ask a witness to write something out?

13 MS. FROMMER: Objection. He

14 just answered. You can answer again.

15 A Whether they knew or saw

16 something themselves.

17 Q So if they had personal

18 knowledge of something important you would

19 have them write out their own statement?

20 MS. FROMMER: Objection.

21 A Yes.

22 MS. FROMMER: Can we just take a

23 two-minute break.

24 (Whereupon, a recess was taken.)

25 MR. JOSEPH: Let's mark these as

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1 Agostini

2 the next two.

3 (Documents were marked as

4 Plaintiff's Exhibits 18 and 19 for

5 identification, as of this date.)

6 Q Sir, I show you what has been

7 marked as Exhibit No. 18. I ask you if you

8 recognize this document.

9 MS. FROMMER: For the record,

10 this has been Bates stamped as 807.

11 Q Do you recognize this document,

12 sir?

13 A Yes, a DD5.

14 Q Is it a DD5 that you prepared?

15 A No. My name is like half torn

16 from here. Can you make it out?

17 Q Yes.

18 A You could?

19 Q Yes.

20 A Well, I can't.

21 MR. JOSEPH: Counsel, is there

22 any dispute that this is his DD5?

23 MS. FROMMER: No.

24 Q Sir, did you write down on

25 February 12, 2001, at approximately 4:55

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1 Agostini

2 p.m., did you interview Sergeant Ohle from

3 Parkchester?

4 A Yes.

5 Q Did Sergeant Ohle indicate to

6 you that there were no problems between Mr.

7 Manganiello and Mr. Acosta?

8 A That's what he stated here.

9 Q Did he at any time indicate to

10 you that there was a shoving match on the

11 morning of the incident between --

12 A Not here.

13 Q Did he indicate to you anywhere?

14 A Did he indicate it to me?

15 Q Did Sergeant Ohle at any point

16 tell you that there had been a shoving match

17 between Anthony Manganiello and Mr. Acosta

18 on the day that Mr. Acosta was murdered?

19 A Not that I can remember.

20 Q Is that the sort of thing you

21 would have made a note of somewhere?

22 A Yes.

23 Q If he said that, would it be in

24 your DD5?

25 A Yes.

150

152

1 Agostini  
 2 Parker. I don't know.  
 3 Q Were you made aware that  
 4 Terrence Alston had worked as a confidential  
 5 informant?  
 6 MS. FROMMER: Objection. You  
 7 can answer.  
 8 A I don't know whether he was a  
 9 confidential informant or not.  
 10 Q Did you ask?  
 11 A No.  
 12 Q Did you take any steps to verify  
 13 Mr. Alston's credibility?  
 14 A Credibility in what?  
 15 Q In the information he was giving  
 16 you, in the information he was giving you.  
 17 A Yes.  
 18 Q What steps did you take?  
 19 A Well, whatever he told me I went  
 20 out there and tried to find out whether it  
 21 was true or not.  
 22 Q Did Mr. Alston ever give you any  
 23 information that turned out to be false?  
 24 A Yes.  
 25 Q How did that affect your view as

151

1 Agostini  
 2 to his credibility?  
 3 A I didn't like him. I really  
 4 didn't like him. Me and him had  
 5 differences.  
 6 Q Why didn't you like him?  
 7 A Because he would say something,  
 8 certain things. You know, he would like  
 9 hide things.  
 10 Q What do you mean by that?  
 11 A Meaning not tell me like if he  
 12 does have somebody, he is not going to tell  
 13 me who it is.  
 14 Q What else?  
 15 A Basically that's it.  
 16 Q Did that raise any suspicions on  
 17 your part whether Mr. Alston was believable?  
 18 A Like I said, I had my  
 19 differences with him, okay. You know, he  
 20 says he has somebody, and I am trying to  
 21 look for this body and he says, "I will give  
 22 it to you in four weeks" or whatever. I had  
 23 my doubts with him, yes.  
 24 Q Can you explain to me why you  
 25 had your doubts with him?

1 Agostini  
 2 don't know whether they made the copies or  
 3 not.  
 4 Q Was the background check in the  
 5 case file when you gave it to the ADA?  
 6 A Yes.  
 7 Q Do you remember any information  
 8 about the background check on Mr. Alston?  
 9 A The only thing I can remember is  
 10 that he is a gang member.  
 11 Q Do you remember what gang he was  
 12 a member of?  
 13 A Bloods.  
 14 Q Was Mr. Alston African American?  
 15 A Yes.  
 16 Q In that section of the Bronx,  
 17 did the Bloods tend to be African American?  
 18 MS. FROMMER: Objection.  
 19 A Tend, no. I have seen a lot of  
 20 Spanish also, yes.  
 21 Q Did you become aware of any  
 22 problems between the Bloods and Mr.  
 23 Acosta --  
 24 MS. FROMMER: Objection.  
 25 Q -- as part of your

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39 (Pages 150 to 153)



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1 Agostini  
 2 A Yes.  
 3 Q Was this document prepared  
 4 shortly after the interview with Terrence  
 5 Alston?  
 6 A Yes.  
 7 Q Did you write down accurately  
 8 what Mr. Alston said?  
 9 A Okay, hold on. Yes.  
 10 Q In fact, did Mr. Alston tell you  
 11 that the security guard approached him to  
 12 purchase the weapon or the security guard  
 13 approached him and tried to hire him to do a  
 14 hit?  
 15 A Now that I am reading it I see  
 16 he was trying to hire him to do a hit.  
 17 Q Did Mr. Alston agree to do a  
 18 hit?  
 19 A I don't know. Does it say? I  
 20 don't know. This doesn't say whether he  
 21 agreed to do it.  
 22 Q Did Mr. Alston say that Terrence  
 23 asked how much, and he did not give a price,  
 24 Terrence stated the Parkchester officer  
 25 asked, "Do you need a gun," and Terrence

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1 Agostini  
 2 stated, "No, I have one"?  
 3 A Well, that to me is saying that  
 4 Terrence was supposed to do it, yes.  
 5 Q Does it also say that Terrence  
 6 took possession of keys with which to commit  
 7 this murder?  
 8 MS. FROMMER: Objection.  
 9 A I have to read it, because I  
 10 can't remember.  
 11 Q Go right ahead.  
 12 A I can't see the key thing.  
 13 Q Did Terrence say that he met  
 14 twice with a Parkchester security officer in  
 15 furtherance of this agreement?  
 16 A As I am reading, yes. You're  
 17 asking me by memory. I can't remember all  
 18 this what's there. If I am reading it I can  
 19 read it, but I can't remember it.  
 20 Q Now, did you pursue any criminal  
 21 charges against Mr. Alston for agreeing to  
 22 commit a murder?  
 23 A Well, sir, you know, that wasn't  
 24 proven. I didn't think I had enough to  
 25 arrest him just based on what he said. Just

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1 Agostini  
 2 what he said I don't have a basis on  
 3 arresting him for it.  
 4 Q What more would you need?  
 5 A I would have to do further  
 6 investigation on it.  
 7 Q Did you believe Mr. Alston that  
 8 he had agreed to kill somebody?  
 9 A Yes, at the time, yes.  
 10 Q You don't believe his confession  
 11 was enough to arrest him for agreeing to  
 12 commit a murder?  
 13 A A lot of people say a lot of  
 14 things, and it doesn't mean anything.  
 15 Q Let me ask you this, sir: In  
 16 Exhibit 20 does he say he was approached in  
 17 September of 2000?  
 18 MS. FROMMER: Exhibit 22 for  
 19 clarity of the record.  
 20 A Yes, September of 2000.  
 21 Q By the way, do you know when Mr.  
 22 Alston went to Rikers Island?  
 23 A No, I don't know.  
 24 Q I am showing you what was  
 25 previously marked as Exhibit No. 9. Have

165

1 Agostini  
 2 you seen this document before?  
 3 A Yes, I have seen it.  
 4 Q Now, was this document used as  
 5 part of your investigation into the homicide  
 6 of Albert Acosta?  
 7 A Yes.  
 8 Q Is this a statement taken by  
 9 Detective Ramos from Terrence Alston?  
 10 A Yes.  
 11 Q Does Terrence Alston in this  
 12 statement indicate that his conversation  
 13 occurred in August of 2000, not September?  
 14 A It says, "late August of 2000."  
 15 Q Did it raise any concerns for  
 16 you that Mr. Alston had given two different  
 17 dates?  
 18 MS. FROMMER: Objection.  
 19 A Well, sir, September, August,  
 20 you know, I am giving you January, February.  
 21 I don't know either.  
 22 Q Sir, in this one, at this point  
 23 did Mr. Alston indicate that he was given a  
 24 master key to the buildings in Parkchester?  
 25 A That's what he stated to Ramos.

42 (Pages 162 to 165)

dale

166

168

1 Agostini  
 2 **Q Was he ever able to produce a**  
 3 **copy of that master key?**  
 4 MS. FROMMER: Objection. You  
 5 can answer.  
 6 A Not that I know.  
 7 **Q Did you ask him where was the**  
 8 **key you were given by the security officer?**  
 9 A I didn't ask him that question.  
 10 **Q Is there a reason why you didn't**  
 11 **ask him that question?**  
 12 A Like I said, I didn't do this  
 13 interview.  
 14 **Q Did you see this interview?**  
 15 A I saw the interview, yes.  
 16 **Q Did you review this interview**  
 17 **before you met with Mr. Alston?**  
 18 A Yes.  
 19 **Q Is there a reason why you didn't**  
 20 **ask him to produce some of the evidence?**  
 21 A Because he was in jail.  
 22 MS. FROMMER: Objection.  
 23 **Q Did you ask him where the**  
 24 **evidence was?**  
 25 A No, I didn't ask him.

167

1 Agostini  
 2 **Q Did he indicate to you or did he**  
 3 **indicate at least in here that he got sent**  
 4 **to jail in August of 2000, I'm sorry, in**  
 5 **October of 2000, not August of 2000?**  
 6 A It says here August, 2000.  
 7 MS. FROMMER: Down here  
 8 (indicating).  
 9 A I went to court in October.  
 10 **Q And got remanded, correct?**  
 11 A And pled out to attempted  
 12 possession of a weapon and got remanded.  
 13 **Q And remanded means sent to**  
 14 **prison, correct?**  
 15 A Yes.  
 16 **Q That would mean that Terrence**  
 17 **Alston was sent to Rikers Island in October**  
 18 **of 2000?**  
 19 A Yes.  
 20 **Q Four months prior to the murder?**  
 21 A Yes.  
 22 **Q Did that raise any concerns for**  
 23 **you as to how he had information about a**  
 24 **murder that happened four months after he**  
 25 **was sent to jail?**

1 Agostini  
 2 MS. FROMMER: Objection. You  
 3 can answer.  
 4 A A murder?  
 5 **Q In other words, did it raise any**  
 6 **questions in your mind as a detective**  
 7 **performing an investigation as to how this**  
 8 **Bloods member has information about a**  
 9 **homicide that happened four months after he**  
 10 **get sent to jail?**  
 11 A Somebody called him.  
 12 **Q Who called him?**  
 13 A I don't know who called him.  
 14 Somebody must have gave him information.  
 15 **Q Who?**  
 16 A I don't know.  
 17 **Q Did you ask him?**  
 18 A I don't know. I didn't ask him.  
 19 **Q Why not?**  
 20 A Because I didn't ask him.  
 21 **Q Why didn't you ask him?**  
 22 A I just didn't ask him.  
 23 **Q Was it your job to evaluate the**  
 24 **credibility –**  
 25 A My job was to interview him and

169

1 Agostini  
 2 to see what he knew about the murder.  
 3 **Q And did part of what he knew**  
 4 **about the murder come from what people were**  
 5 **telling him?**  
 6 MS. FROMMER: Objection.  
 7 A I don't know that. I don't know  
 8 that.  
 9 **Q When you said a few minutes ago**  
 10 **someone called him, what did you mean by**  
 11 **that?**  
 12 A If he is in jail, either  
 13 somebody visited him, somebody called him or  
 14 somebody gave him information. It could  
 15 have been another inmate. It could have  
 16 been somebody -- somebody gave him  
 17 information that this murder happened.  
 18 **Q Is that something you would have**  
 19 **wanted to know?**  
 20 A But my job was to interview him  
 21 to see what he knew about the murder, not  
 22 how he obtained the information, this and  
 23 that. My information, my thing was to see  
 24 what he knew about the murder, what he knew.  
 25 **Q Isn't how he knew about the**

43 (Pages 166 to 169)



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1 Agostini  
 2 murder as important as what he knew?  
 3 MS. FROMMER: Objection.  
 4 A No.  
 5 Q Sir, did you find it unusual  
 6 that he didn't provide this information in  
 7 October of 2000?  
 8 MS. FROMMER: Objection.  
 9 A October of 2000 provide  
 10 information? No.  
 11 Q He got sentenced in October of  
 12 2000, correct?  
 13 A Yes.  
 14 Q And as part of the sentencing if  
 15 a criminal defendant provides information on  
 16 other crimes they can get a lighter sentence  
 17 sometimes, right?  
 18 MS. FROMMER: Objection.  
 19 A Maybe.  
 20 Q Is that why people become  
 21 confidential informants?  
 22 MS. FROMMER: Objection.  
 23 Q Is that one of the reasons  
 24 people become confidential informants?  
 25 A That's one of the reasons they

171

1 Agostini  
 2 do, yes.  
 3 MS. FROMMER: Objection.  
 4 Q In October of 2000 when Mr.  
 5 Alston was pleading guilty and being  
 6 sentenced, did he mention that a Parkchester  
 7 cop tried to hire him to commit a murder?  
 8 A I didn't ask him that question,  
 9 and I didn't know him at that time.  
 10 Q Why didn't you ask him why he  
 11 didn't provide this information sooner?  
 12 MS. FROMMER: Objection.  
 13 A Sooner than the murder?  
 14 Q As part of his plea bargain.  
 15 A Sir, I can't read his mind. He  
 16 is a Blood member, okay. He is a gang  
 17 member. They are not going to provide  
 18 information to the police. They don't even  
 19 like the police.  
 20 Q Why was he giving information to  
 21 you?  
 22 MS. FROMMER: Objection.  
 23 A I didn't know him at that time.  
 24 Q You were a member of the Police  
 25 Department, correct?

172

1 Agostini  
 2 A Yes.  
 3 Q Why is it that Terrence Alston,  
 4 a gang member, was providing information to  
 5 you?  
 6 A I didn't know him in the year  
 7 2000.  
 8 Q I am asking 2001.  
 9 A He did.  
 10 Q In February, 2001, why did this  
 11 Blood gang member call you?  
 12 A Why did he?  
 13 Q Yes.  
 14 A Because he said he had  
 15 information.  
 16 Q And was Mr. Alston given  
 17 anything in exchange for this information?  
 18 MS. FROMMER: Objection.  
 19 A Not that I know of.  
 20 Q Do you know if there was a  
 21 procedure by which his sentence could be  
 22 reduced for providing this information?  
 23 MS. FROMMER: Objection.  
 24 A That I know of, you have to  
 25 speak to the DA's office, the DA's office

173

1 Agostini  
 2 and whoever is in charge of Alston.  
 3 Q Would that be Mr. Alston's  
 4 handler?  
 5 A Could be. I don't know if  
 6 Detective Parker was his handler, but  
 7 Detective Parker was the one that was  
 8 relaying everything. I don't know. I don't  
 9 know with this Alston.  
 10 Q Did you ever have a conversation  
 11 with Detective Parker and ask him what Mr.  
 12 Alston was getting in exchange for this  
 13 information, if anything?  
 14 MS. FROMMER: Objection.  
 15 A Not that I can remember.  
 16 Q Is the motivation of a known  
 17 gang member who is providing information  
 18 something that you would want to consider as  
 19 a detective investigating a homicide?  
 20 MS. FROMMER: Objection.  
 21 A Like I said, I don't remember.  
 22 I don't remember these conversations.  
 23 Q My question is is that an  
 24 important factor for you as a detective?  
 25 MS. FROMMER: Objection.

44 (Pages 170 to 173)



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1 Agostini  
 2 A My important factor is to get  
 3 the story, to get what he knows. I don't  
 4 care whether they are going to let him go,  
 5 reduce his sentence. I don't care what they  
 6 do with him. My job is to get this  
 7 information and to solve the homicide,  
 8 that's my job.  
 9 Q Is it part of your job to take  
 10 some steps to verify whether the information  
 11 you are getting is reliable?  
 12 A Yes.  
 13 Q What steps did you take to  
 14 verify whether the information Mr. Alston  
 15 provided about a Parkchester security  
 16 officer trying to hire him to do a hit was  
 17 reliable?  
 18 A Hire him to do a hit? I can't  
 19 verify that, because he is in jail. I can't  
 20 verify that.  
 21 Q Was anybody else present when  
 22 this happened?  
 23 A That's not what he said. He  
 24 would have mentioned something that he was  
 25 present with somebody else.

175

1 Agostini  
 2 Q Did you ask him what he did with  
 3 the key?  
 4 A I didn't ask him that. I didn't  
 5 ask him those questions about keys.  
 6 Q Would it have been a valuable  
 7 piece of evidence if he could produce the  
 8 key?  
 9 MS. FROMMER: Objection.  
 10 A The key had to do with what?  
 11 Q The master key to the buildings  
 12 for Parkchester which he says he was given  
 13 by this Parkchester security guard so he can  
 14 do a hit.  
 15 MS. FROMMER: Objection. Please  
 16 watch your tone, counselor.  
 17 A But the key had nothing to do  
 18 with my investigation. I don't care about a  
 19 key. I don't care about a key.  
 20 Q Now, how many times did you  
 21 speak to Terrence Alston at Rikers Island?  
 22 A I can't remember. I'm not going  
 23 to guess either. I don't remember.  
 24 Q Was it more than once?  
 25 MS. FROMMER: Personally speak

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1 Agostini  
 2 to him?  
 3 MR. JOSEPH: Yes.  
 4 MS. FROMMER: How many times did  
 5 you personally go to Rikers Island to  
 6 speak to him?  
 7 THE WITNESS: I don't know. One  
 8 or two times, but I'm not sure.  
 9 Q Did you ever speak to Terrence  
 10 Alston outside of Rikers Island?  
 11 A Yes.  
 12 Q Where?  
 13 A On the phone. He called.  
 14 Q Did you take notes when he  
 15 called?  
 16 A No. I don't take notes.  
 17 Q Did you write down what he said  
 18 to you when he called?  
 19 A No.  
 20 Q Did you record the  
 21 conversations?  
 22 A No.  
 23 Q At the 43rd Precinct in 2001,  
 24 did you have the capability to record  
 25 conversations on squad phones?

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1 Agostini  
 2 A We don't have a tape recorder.  
 3 Q On February 15, 2001, did  
 4 Terrence Alston tell you that a friend of  
 5 his named Johnny Baker sold Anthony  
 6 Manganiello a gun?  
 7 MS. FROMMER: Objection.  
 8 A That's what he says here on the  
 9 thing, yes.  
 10 Q Is that what he told you?  
 11 A That's what he said, yes.  
 12 Q I show you what's been  
 13 previously marked as Plaintiff's Exhibit 10.  
 14 Do you recognize this document?  
 15 A Yes, I do.  
 16 Q What do you recognize it to be?  
 17 A Interview with a Johnny Baker,  
 18 which I say I can't remember him. I can't  
 19 remember a Johnny Baker, but this is the  
 20 interview I did with Johnny Baker.  
 21 Q Do you have any recollection as  
 22 you sit here today of that interview?  
 23 A Recollection, no. I just  
 24 remember that I interviewed someone and  
 25 basically asked him did he sell a gun to the

45 (Pages 174 to 177)



1 Agostini  
 2 effect of Alston, and he said no.  
 3 **Q Did you ask him specifically did**  
 4 **he sell a 22-caliber weapon to a Parkchester**  
 5 **security officer?**  
 6 A I can't remember that. I can't  
 7 remember that off memory.  
 8 **Q Is that what's indicated in your**  
 9 **DD5?**  
 10 A Yes, that's what it says.  
 11 **Q Did Mr. Baker indicate to you**  
 12 **that he did not sell a 22-caliber handgun to**  
 13 **any Parkchester security officer?**  
 14 MS. FROMMER: For the record, I  
 15 want you to look and see if that  
 16 mentions the caliber of the gun. If  
 17 you can show me on Plaintiff's  
 18 Exhibit 10 where .22 is written.  
 19 MR. JOSEPH: He's looking at  
 20 Damon. Sorry.  
 21 MS. FROMMER: Does it say  
 22 anywhere on that interview what caliber  
 23 gun?  
 24 **Q Sir, did Mr. Baker deny selling**  
 25 **a firearm of any caliber to any Parkchester**

1 Agostini  
 2 **security officer?**  
 3 MS. FROMMER: Objection. You  
 4 can answer.  
 5 A That's correct. He said he had  
 6 no knowledge.  
 7 **Q Did you believe him?**  
 8 A Yes.  
 9 **Q Did you question Mr. Alston**  
 10 **about this?**  
 11 A Yes.  
 12 **Q And how did you do that? Did**  
 13 **you go to Rikers? Did you call him on the**  
 14 **phone?**  
 15 A I believe it was the phone.  
 16 That's when I had a big argument over the  
 17 phone that the guy that he said that he sold  
 18 the gun to, I questioned him, and he was  
 19 saying, "Why did you interview him? Why did  
 20 you question him? I told you not to do  
 21 that," this and that.  
 22 **Q I don't know what "this and**  
 23 **that" is. Can you explain to me what you**  
 24 **mean by "this and that"?**  
 25 A Meaning he didn't want me to

1 Agostini  
 2 interview the person, okay, that sold the  
 3 gun to the security officer without him  
 4 present.  
 5 **Q And was that significant to you?**  
 6 A Yes.  
 7 **Q Why was that significant to you?**  
 8 A Because he told me that this  
 9 person, Johnny, whoever he is, sold the gun,  
 10 and he didn't do it.  
 11 **Q Right.**  
 12 A Exactly.  
 13 **Q You say you had a big fight with**  
 14 **Terrence Alston.**  
 15 A Just an argument over this.  
 16 **Q What did you say to him, and**  
 17 **what did he say to you?**  
 18 MS. FROMMER: Objection.  
 19 A I don't remember context. The  
 20 context was that I interviewed this person,  
 21 and he is not the guy that sold the gun.  
 22 **Q Did you understand Mr. Alston**  
 23 **wanted to be present because he was**  
 24 **attempting to influence what the witness**  
 25 **said?**

1 Agostini  
 2 MS. FROMMER: Objection.  
 3 A I don't know what was his  
 4 motive.  
 5 **Q Did you ask him, "Why do you**  
 6 **have to be there when I interview a**  
 7 **witness?"**  
 8 MS. FROMMER: Objection.  
 9 A No, I didn't ask him that.  
 10 **Q Did you ask him anything along**  
 11 **those lines?**  
 12 A No.  
 13 MS. FROMMER: Objection.  
 14 **Q Did it raise any concerns for**  
 15 **you about his believability at this point?**  
 16 MS. FROMMER: Objection. You  
 17 can answer.  
 18 A Yes, it is.  
 19 **Q And did you ask him why this**  
 20 **witness is saying he didn't do what Mr.**  
 21 **Alston is saying he did?**  
 22 MS. FROMMER: Objection.  
 23 A I don't remember what he said.  
 24 I don't remember the conversation.  
 25 **Q Did you make any notes about**  
 46 (Pages 178 to 181)



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184

1 Agostini  
2 that conversation?  
3 A I said no, I don't make notes of  
4 the conversations like that.  
5 Q Whatever was said in that  
6 conversation between you and Mr. Alston, did  
7 that in your view tend to undermine Mr.  
8 Alston's credibility?  
9 MS. FROMMER: Objection.  
10 A Somewhat, but I know he was  
11 playing games, because he was in jail and  
12 maybe he wanted to be out of jail before he  
13 gave me like the correct person who did it.  
14 So he was like playing games. To me he was  
15 playing games.  
16 Q What do you mean he was playing  
17 games?  
18 A Meaning get him out first and he  
19 will give me the correct person.  
20 Q Did he indicate to you that he  
21 wanted you to get him out?  
22 A I think he indicated to the DA's  
23 office that he wants to be out if he is  
24 giving this information.  
25 Q Was he let out?

183

1 Agostini  
2 A He was let out.  
3 Q When was he let out?  
4 A I don't remember.  
5 Q Was it in 2001?  
6 A It was the same year, yes.  
7 Q Do you remember about what  
8 month?  
9 A I don't remember, no.  
10 Q Was it prior to Mr.  
11 Manganiello's arrest in April of 2001?  
12 MS. FROMMER: Objection.  
13 Q Was Mr. Alston released from  
14 jail before Anthony Manganiello was arrested  
15 in April of 2001?  
16 A Yes.  
17 Q Do you know what Mr. Alston's  
18 sentence was?  
19 A No.  
20 Q If I were to suggest a number of  
21 four years, would that ring any bells?  
22 MS. FROMMER: Objection.  
23 A No.  
24 Q Did you find it unusual that a  
25 felon's sentence got dramatically cut for

1 Agostini  
2 providing information?  
3 MS. FROMMER: Objection.  
4 A I don't know what was the  
5 sentence or what was the deal with him.  
6 Q Did you ever ask?  
7 A Like I said, no, and I didn't  
8 care.  
9 Q Let me get the time line down.  
10 When did you have this  
11 conversation with Alston about Mr. Baker  
12 denying selling firearms?  
13 A I believe it was right after  
14 this date, February 17th, but I don't  
15 remember what specific day was that.  
16 Q What was your next involvement  
17 with Mr. Alston after that fight on the  
18 phone?  
19 MS. FROMMER: Objection. You  
20 can answer.  
21 Q Or argument over the phone.  
22 A I believe the next involvement  
23 was, and I wasn't even involved with him any  
24 more, it was Detective Parker and the DA's  
25 office, they brought in I believe it was

185

1 Agostini  
2 Alston and the kid that he supposedly  
3 produced.  
4 Q Is that Mr. Damon?  
5 A Yes, to the DA's office.  
6 Q And at this point, did you raise  
7 any concerns to the DA's office about what  
8 happened between you and Mr. Baker and Mr.  
9 Alston?  
10 A Yes. They already knew.  
11 Q And did you ever have a  
12 conversation with Detective Parker about  
13 that?  
14 A Not that I can recall. I don't  
15 remember whether I did. I mean if I did I  
16 probably, but I can't remember.  
17 Q Sir, after Mr. Baker denied  
18 selling any weapons, did you have any  
19 concerns with a murder prosecution going  
20 forward against Anthony Manganiello?  
21 MS. FROMMER: Objection.  
22 A Did I have any concerns?  
23 Q Yes.  
24 A No. My job is to proceed with  
25 the investigation.

47 (Pages 182 to 185)





186

1 Agostini  
 2 **Q Did you have any concerns about**  
 3 **the integrity of the evidence which Mr.**  
 4 **Alston was presenting in this case?**  
 5 MS. FROMMER: Objection.  
 6 A There is no evidence. I found  
 7 the guy to give me no evidence at all.  
 8 Johnny whoever he is didn't give me  
 9 anything, so no.  
 10 **Q After that telephone**  
 11 **conversation, did you have any further**  
 12 **dealings at all with Terrence Alston?**  
 13 A That I can remember, okay, that  
 14 I could remember, my memory, the next time  
 15 that I could remember is seeing him at the  
 16 DA's office with Damon.  
 17 **Q Do you know how Mr. Damon got**  
 18 **brought to the ADA's office?**  
 19 A No, I don't know. He was there  
 20 when I arrived.  
 21 MR. JOSEPH: Off the record.  
 22 (Whereupon, a discussion was  
 23 held off the record.)  
 24 (Document was marked as  
 25 Plaintiff's Exhibit 23 for

187

1 Agostini  
 2 identification, as of this date.)  
 3 **Q I'm showing you, sir, what's**  
 4 **been marked as Plaintiff's Exhibit 23.**  
 5 MS. FROMMER: For the record,  
 6 this is a document that has some  
 7 handwriting on it. I have seen this  
 8 document before. I have never seen it  
 9 with this handwriting. This is not my  
 10 handwriting, and I believe that Mr.  
 11 Joseph will represent that it's not his  
 12 handwriting, nor does he know how the  
 13 handwriting got there.  
 14 MR. JOSEPH: Correct.  
 15 MS. FROMMER: You don't know who  
 16 Jerry Smith is?  
 17 MR. JOSEPH: No.  
 18 **Q Sir, do you know who Jerry Smith**  
 19 **is?**  
 20 A No.  
 21 **Q Do you recognize Plaintiff's**  
 22 **Exhibit 23?**  
 23 A Yes.  
 24 **Q What do you recognize it to be?**  
 25 A It's the interview with Mark

188

1 Agostini  
 2 Damon.  
 3 **Q Did you play any role in getting**  
 4 **Mark Damon to appear at the assistant**  
 5 **district attorney's office?**  
 6 A No. I didn't play a role in it.  
 7 I knew he was coming in, okay, but like I  
 8 said, I really have, you know, no dealings  
 9 with Terrence. So that was between  
 10 Detective Parker and ADA Scaccia. When they  
 11 called me to say, "He's here. Come to the  
 12 DA's office," that was the first time I ever  
 13 seen this person.  
 14 **Q How did you know he was coming**  
 15 **in?**  
 16 A Because the DA was telling me he  
 17 was supposed to come in, the kid was  
 18 supposed to come in.  
 19 **Q How old was this kid?**  
 20 A It says here he is 17 years old.  
 21 **Q Was he with his parents?**  
 22 A No. He was there by himself.  
 23 **Q And did this gentleman live in**  
 24 **the Parkchester area?**  
 25 A Let me see. Yes, 1491

189

1 Agostini  
 2 Metropolitan.  
 3 **Q Was he also a gang member?**  
 4 A Like I say, I didn't know who he  
 5 was, so I couldn't run him. I don't know  
 6 who he was. I don't know if I ran him  
 7 afterward, so I didn't know who he was prior  
 8 to me meeting him.  
 9 **Q Do you have any recollection of**  
 10 **running him after you met him?**  
 11 A No.  
 12 **Q After you met him for the first**  
 13 **time, did you do any investigation at all**  
 14 **into Mr. Damon's background?**  
 15 A I can't remember if I did or  
 16 not.  
 17 **Q How old was Mr. Alston?**  
 18 A I don't know.  
 19 **Q Ball park.**  
 20 MS. FROMMER: Objection.  
 21 A Ball park, I can't.  
 22 **Q Was he in the same age range as**  
 23 **Mr. Damon?**  
 24 MS. FROMMER: Objection.  
 25 A No.

48 (Pages 186 to 189)



190

1 Agostini  
 2 **Q Was he more than five years**  
 3 **older than Mr. Damon?**  
 4 MS. FROMMER: Objection. If he  
 5 said he can't give a ball park I am  
 6 going to object. That's prejudicial.  
 7 I am going to instruct him not to  
 8 answer that. 16-year-olds look like  
 9 they are 42 these days. I am going to  
 10 instruct him not to answer.  
 11 **Q Did you ever ask how Mr. Damon**  
 12 **knew Mr. Alston?**  
 13 A No.  
 14 **Q What if anything did Mr. Damon**  
 15 **say in your presence?**  
 16 A He said what he stated here  
 17 (indicating).  
 18 **Q Are you referring to Exhibit 23?**  
 19 A Yes.  
 20 **Q Did you prepare Exhibit 23?**  
 21 A Yes.  
 22 **Q And did you write down**  
 23 **accurately what was said by Mr. Damon?**  
 24 A Basically.  
 25 **Q What do you mean by basically?**

191

1 Agostini  
 2 A I mean, you know, I didn't have  
 3 a pad and I wrote. I hear what he's saying  
 4 and then I put it on paper, not word by  
 5 word, of course.  
 6 **Q Is Exhibit 23 an accurate**  
 7 **recount to the best of your recollection of**  
 8 **what Mr. Damon said?**  
 9 A Yes.  
 10 **Q Now, did you find it odd that**  
 11 **Mr. Alston had produced another witness now**  
 12 **claiming that he sold Anthony Manganiello a**  
 13 **gun?**  
 14 MS. FROMMER: Objection.  
 15 A I knew he knew. Like I always  
 16 said, he knew, he knows, I'm sorry, who he  
 17 gave the gun to, but he gave me a wrong  
 18 person. But I always knew that he knows the  
 19 right person. And that's what I thought,  
 20 this person was the right person, instead of  
 21 the other guy, whoever he was, that I  
 22 interviewed.  
 23 **Q Did it ever raise any concerns**  
 24 **to you that Mr. Alston was making up stories**  
 25 **to get out of jail?**

192

1 Agostini  
 2 MS. FROMMER: Objection.  
 3 A Was he making up stories? You  
 4 know what, that was not for me to determine  
 5 that, whether he wanted to get out of jail  
 6 just to determine this. This person came  
 7 up, he said what he had to say in front of  
 8 the DA's office, in front of Derek Parker,  
 9 okay, and he said he sold it.  
 10 **Q Did you provide Mr. Damon with**  
 11 **any information concerning the crime prior**  
 12 **to being in the DA's office with him?**  
 13 A I didn't speak to Damon.  
 14 **Q Did you speak to Mr. Parker at**  
 15 **all about Mr. Damon prior to meeting him in**  
 16 **the DA's office that date?**  
 17 A Prior, I didn't know who was  
 18 coming. Like I said, the first time I knew  
 19 about this person was that day, right.  
 20 **Q Did Mr. Damon ever recant his**  
 21 **story?**  
 22 A Yes.  
 23 **Q When did he recant his story?**  
 24 A Prior to the trial.  
 25 **Q How did Mr. Damon recant his**

193

1 Agostini  
 2 **story?**  
 3 A Basically he was summoned to the  
 4 DA's office, the DA spoke to him, and he  
 5 recanted the story. And I believe one of  
 6 their ADA investigators started talking to  
 7 Damon, and he said no, that Alston made him  
 8 say it.  
 9 **Q When did this happen?**  
 10 A You have to tell me the trial,  
 11 when was the trial? I don't remember what  
 12 date.  
 13 **Q When in relation to the trial**  
 14 **did this occur?**  
 15 A Maybe a week. No, no, I don't  
 16 know if the trial was going on, or before  
 17 the trial. But I'm not sure if the trial  
 18 was going on, but he came to be interviewed,  
 19 and that's when he recanted.  
 20 **Q Did he recant in your presence?**  
 21 A He recanted to them first, and  
 22 then I sat down with the investigator and he  
 23 said that Murdock, whatever, Alston made him  
 24 say it.  
 25 **Q Did he say why Alston made him**

49 (Pages 190 to 193)



194

1 Agostini  
 2 say it?  
 3 A No.  
 4 Q Do you know if that information  
 5 was ever provided to the defense lawyers for  
 6 Anthony Manganiello?  
 7 A The DA knew about it. It's not  
 8 my job to give the defense information. The  
 9 DA should have done that.  
 10 Q The first time you met Mark  
 11 Damon, did you have any reason to question  
 12 whether he was telling the truth?  
 13 A As a matter of fact, I looked at  
 14 him and he was a quiet kid, soft spoken, and  
 15 I believed him.  
 16 Q Did you do anything to verify  
 17 whether he had any criminal involvement in  
 18 the past?  
 19 A Maybe I did, but I don't  
 20 remember.  
 21 Q If he did, would that  
 22 information be placed into the case file?  
 23 A Yes.  
 24 Q And was that information also  
 25 lost?

195

1 Agostini  
 2 A Yes.  
 3 Q By the way, did you have any  
 4 further contact with Detective Parker after  
 5 that initial meeting with Mr. Damon?  
 6 A After?  
 7 Q Yes.  
 8 A I'm not sure I did, but I can't  
 9 remember.  
 10 Q Were you aware at any time of  
 11 Detective Parker being fired?  
 12 MS. FROMMER: Objection.  
 13 A No, I don't know if he was  
 14 fired.  
 15 Q Are you aware of any  
 16 disciplinary matters that happened to  
 17 Detective Parker because of Mark Damon?  
 18 MS. FROMMER: Objection.  
 19 A No. The only thing I know about  
 20 Detective Parker is I think he wrote a book  
 21 or something. I believe he wrote a book,  
 22 but that's it.  
 23 Q In Terrence Alston's statement  
 24 did he also say to you that the security  
 25 guard wanted Acosta killed over a dispute

196

1 Agostini  
 2 with a girl?  
 3 MS. FROMMER: Why don't you look  
 4 at the two DD5's before you answer that  
 5 question.  
 6 A I believe that was on Ramos'  
 7 thing.  
 8 MS. FROMMER: I am showing him  
 9 my copy of Plaintiff's Exhibit 9.  
 10 A He said this to Ramos. He  
 11 didn't say this to me.  
 12 Q Were you aware of that  
 13 statement?  
 14 A Yes.  
 15 Q Did you speak to Mr. Acosta's  
 16 girlfriend?  
 17 A Yes, I did.  
 18 Q Did she indicate that she knew  
 19 Anthony Manganiello in any way?  
 20 A I can't remember her name or  
 21 whatever. I remember talking to her. She  
 22 said she knew both of them, but she had, I  
 23 guess, nothing to do with him.  
 24 Q Anthony Manganiello?  
 25 A Yes.

197

1 Agostini  
 2 Q Now, as far as Mr. Acosta's  
 3 girlfriend was concerned, there was no  
 4 problem between her and Anthony Manganiello?  
 5 A Correct.  
 6 Q And did that cause you concern  
 7 about the believability of what Mr. Alston  
 8 was telling you?  
 9 A No, because it could be  
 10 anything. It could be maybe that someone is  
 11 infatuated with a person but won't tell the  
 12 person.  
 13 Like I like her, but I'm not  
 14 going to tell her that I like her, and she  
 15 won't know that I'm a problem (indicating).  
 16 MS. FROMMER: Thank you. I'm  
 17 flattered.  
 18 Q Aside from what you told us, did  
 19 you have any other argument with Mr. Alston?  
 20 A No. Basically that was it.  
 21 Q By the way, did you ask Mr.  
 22 Damon, the 17-year-old kid, how he came in  
 23 possession of a firearm?  
 24 MS. FROMMER: Objection.  
 25 A Sir, I didn't talk to him.

50 (Pages 194 to 197)





198

200

1 Agostini  
 2 Q You were there in the DA's  
 3 office, correct?  
 4 A Yes, and I didn't talk to him.  
 5 You know what, this Alston guy didn't want  
 6 me to talk to him, so it was like ADA, Derek  
 7 Parker and the kid. I didn't ask him any  
 8 questions. I just listened.  
 9 Q And by the way, in 2001, was it  
 10 a felony to sell a firearm?  
 11 A To sell a firearm, yes.  
 12 Q Was Mr. Damon ever charged with  
 13 the sale of a firearm?  
 14 MS. FROMMER: Objection.  
 15 A No.  
 16 Q Why not?  
 17 A I didn't have enough. There was  
 18 no gun.  
 19 Q Without the presence of the gun,  
 20 did you feel that you could charge Mark  
 21 Damon for sale of a gun based on his  
 22 confession?  
 23 MS. FROMMER: Objection.  
 24 A I don't think so.  
 25 Q What information would you need

199

1 Agostini  
 2 or what evidence would you need to charge  
 3 Mr. Damon with possession of a firearm or  
 4 sale of a firearm?  
 5 MS. FROMMER: Objection.  
 6 A Probably just the gun and  
 7 someone else who he sold it to.  
 8 Q I believe you said Mr. Alston  
 9 was a Blood. Do you know if he was a member  
 10 of a local Blood organization that was  
 11 centered in Parkchester?  
 12 MS. FROMMER: Objection.  
 13 A I don't know that.  
 14 Q Do you know where his gang so to  
 15 speak was based?  
 16 MS. FROMMER: Objection.  
 17 A No.  
 18 Q Was Mr. Damon at any time asked  
 19 where he got this gun from?  
 20 MS. FROMMER: Objection.  
 21 A Like I said, I didn't ask him,  
 22 and I can't remember if anybody else asked  
 23 him.  
 24 Q Was Mr. Damon asked, did he  
 25 write out his own statement?

1 Agostini  
 2 A I didn't ask him that.  
 3 Q Did you see him write out his  
 4 own statement?  
 5 A I don't think so.  
 6 Q Did you ever see a statement  
 7 written by Mr. Damon?  
 8 A I don't think I seen one.  
 9 Q Do you know if Detective Parker  
 10 took a statement from him?  
 11 A I don't know.  
 12 Q At the point in time that you  
 13 met with Mr. Damon and Mr. Parker in ADA  
 14 Scaccia's office, was Mr. Alston still in  
 15 custody?  
 16 A Well, sir, if you see the DD5 of  
 17 the meeting, I believe Alston was present.  
 18 Q Right.  
 19 A Right.  
 20 Q What I am asking you is was he  
 21 present in handcuffs in a prison uniform, or  
 22 did he arrive on his own?  
 23 MS. FROMMER: Objection.  
 24 A I believe he arrived on his own.  
 25 Q Was it your understanding that

201

1 Agostini  
 2 Mr. Alston had gained his freedom by  
 3 producing a witness who would tie Anthony  
 4 Manganiello to the death of Albert Acosta?  
 5 MS. FROMMER: Objection.  
 6 A Well, my impression was that  
 7 they let him out so he can give us the  
 8 information, yes.  
 9 MR. JOSEPH: Let's have this  
 10 marked as 24.  
 11 (Document was marked as  
 12 Plaintiff's Exhibit 24 for  
 13 identification, as of this date.)  
 14 Q Do you know where Alston lived  
 15 when he wasn't in jail?  
 16 A I believe it was Parkchester.  
 17 Q I am going to show you Exhibit  
 18 No. 24. Do you recognize that?  
 19 A Yes.  
 20 Q Did you sign that document?  
 21 A Yes.  
 22 Q And what is this document?  
 23 A This is the arrest of Anthony  
 24 Manganiello.  
 25 Q Is this known as a felony

51 (Pages 198 to 201)

202

204

1 Agostini  
2 complaint?  
3 A Yes.  
4 Q And did you sign a felony  
5 complaint accusing Anthony Manganiello of  
6 murder in the second degree, two counts, and  
7 one count of manslaughter?  
8 A Yes.  
9 Q And did you do that on April 20,  
10 2001?  
11 A April 20th, yes.  
12 Q And why did you accuse Anthony  
13 Manganiello of murder —  
14 MS. FROMMER: Objection.  
15 Q — on April 20, 2001?  
16 A I received an arrest warrant for  
17 his arrest.  
18 Q Did you fill out any paperwork  
19 for that arrest warrant?  
20 A I filled out numerous paperwork.  
21 Q Where is that paperwork now?  
22 A It's missing.  
23 Q Do you know when that paperwork  
24 went missing?  
25 A Some time between I would say

203

1 Agostini  
2 maybe January of 2003 until February or  
3 whatever of the next year.  
4 Q What exactly did you say to  
5 obtain the arrest warrant?  
6 MS. FROMMER: Objection.  
7 Q What is your recollection?  
8 A What did I say? I just  
9 presented evidence, my evidence of witnesses  
10 and their accounts.  
11 Q What account of what witnesses  
12 did you present to obtain a search warrant?  
13 MS. FROMMER: Objection. Arrest  
14 warrant.  
15 A I presented — I forgot his  
16 name, Cobb and Alston.  
17 Q Apart from Cobb and Alston, did  
18 you present any other witnesses?  
19 A Yes. I believe Booth and  
20 Cartone.  
21 Q Anybody else?  
22 A That I can remember, no.  
23 Q When you say you presented a  
24 witness, what do you mean? Did you write  
25 down a statement as to what they told you?

1 Agostini  
2 Did you present them for testimony?  
3 A I presented them for — I  
4 believe some of them for testimony, yes.  
5 Q What I am asking you is, I am  
6 asking you about your obtaining the arrest  
7 warrant, not any grand jury testimony.  
8 MS. FROMMER: I think he is  
9 trying to find out when you say  
10 "present" what you meant by that? Did  
11 you actually physically bring an  
12 individual? Did you present paperwork?  
13 Did you have a box of evidence?  
14 Am I right, that's what you're  
15 asking?  
16 MR. JOSEPH: Yes.  
17 A And my answer is I don't  
18 remember whether this went to the grand jury  
19 first and then I received the arrest  
20 warrant. All I know is I was home, my boss  
21 called me, says, "Come in. You got to get  
22 an arrest warrant for him. Go see the DA."  
23 Q Who was your boss that called  
24 you? Was it Scott?  
25 A No, no. It was Sergeant

205

1 Agostini  
2 Napalotano. I went to the DA's office, and  
3 we obtained an arrest from the judge.  
4 Q By the way, when you obtained  
5 the arrest warrant, did you advise the judge  
6 that Mr. Alston had given you false  
7 information in the past?  
8 A I didn't speak to the judge.  
9 The judge asked me questions, and I signed  
10 it, and that was it.  
11 Q The thing you signed, did it  
12 have any statement in which you swore that  
13 Alston, the information provided by Alston  
14 was credible and reliable?  
15 MS. FROMMER: Objection.  
16 A Well, I didn't say Alston.  
17 MS. FROMMER: I think you did.  
18 I think you did.  
19 Q You said Cobb, Alston, Booth and  
20 Cartone.  
21 MS. FROMMER: Do you want to  
22 amend any of that?  
23 THE WITNESS: To the judge?  
24 MS. FROMMER: No. The question  
25 that he asked you was what witnesses

52 (Pages 202 to 205)



206

208

1 Agostini  
 2 did you present to the DA in getting  
 3 the arrest warrant, and I believe the  
 4 answer you gave was Cobb, Alston, Booth  
 5 and Cartone.  
 6 MR. JOSEPH: Correct.  
 7 A I don't know whether they went  
 8 to the grand jury before I got this warrant.  
 9 I'm not sure. I'm not sure how it went  
 10 through.  
 11 MR. JOSEPH: Let's take two  
 12 minutes.  
 13 (Whereupon, a recess was taken.)  
 14 MS. FROMMER: I have been handed  
 15 a transcript of a hearing on April 23rd  
 16 of 2001, regarding Mr. Manganiello's  
 17 criminal prosecution which appears to  
 18 be part of a transcript regarding an  
 19 arraignment. And according to this it  
 20 was represented by the ADA that the  
 21 case was going to proceed to the grand  
 22 jury and had not yet proceeded to the  
 23 grand jury as of April 23rd of 2001.  
 24 Q So, sir, assuming that prior to  
 25 arresting Mr. Manganiello a case had not  
 207

1 Agostini  
 2 been presented to a grand jury, what did you  
 3 do to obtain an arrest warrant?  
 4 MS. FROMMER: Objection. You  
 5 can answer.  
 6 A That right there, it says  
 7 partially presented before his arrest,  
 8 partially presented to the grand jury.  
 9 MS. FROMMER: I don't know what  
 10 that means, but according to this  
 11 document it was represented that the  
 12 case had not been presented.  
 13 MR. JOSEPH: It's on page nine.  
 14 MS. FROMMER: I understand that,  
 15 but we don't know what that was.  
 16 A I don't know whether it was  
 17 partially presented to them. I don't know.  
 18 Q Sir, is it fair to say that you  
 19 can only make an arrest based on grand jury  
 20 presentment if there has been an indictment,  
 21 correct?  
 22 A I don't know.  
 23 Q At the time of an arraignment,  
 24 defendant would obviously already be  
 25 arrested, correct?

1 Agostini  
 2 A Right.  
 3 Q Now, at the point in time when  
 4 Mr. Manganiello was arrested by you, was  
 5 there a grand jury; had there been a grand  
 6 jury indictment?  
 7 A I'm not sure. I don't remember.  
 8 Q Can you tell me assuming for a  
 9 few minutes that there was no grand jury  
 10 presentment prior to the arrest, how would  
 11 you have obtained his arrest warrant? What  
 12 was the procedure?  
 13 A Presenting evidence I guess to  
 14 the judge, in front of the judge.  
 15 Q Now, when you present evidence  
 16 in front of a judge, is there a transcript  
 17 taken?  
 18 A Sir, I can't remember that.  
 19 Q When you present evidence in  
 20 front of a judge, is it you presenting the  
 21 evidence in front of a judge as to what  
 22 other witnesses have said, or are you  
 23 presenting what you have seen, heard,  
 24 smelled, and there are other witnesses being  
 25 called, also?  
 209

1 Agostini  
 2 MS. FROMMER: Objection.  
 3 A I don't remember this, sir. I  
 4 can't remember this.  
 5 Q When you presented the  
 6 information to the judge, did you advise the  
 7 judge that Mr. Alston had given you false  
 8 information in the past?  
 9 MS. FROMMER: Objection.  
 10 A That I know I don't speak to a  
 11 judge about that, but I can't remember any  
 12 conversation with this judge. I cannot  
 13 remember any conversation with this judge,  
 14 and I don't think I would mention this  
 15 Alston guy to him.  
 16 Q By the way, what evidence  
 17 created probable cause to believe that Mr.  
 18 Manganiello had murdered Albert Acosta on  
 19 the day you arrested him?  
 20 A My conversation with Cobb, okay,  
 21 as he was walking down the street, and he  
 22 heard four shots from the basement. And as  
 23 he was walking towards the basement Anthony  
 24 Manganiello comes out of the basement, and  
 25 he asked Anthony Manganiello, "Did you hear

53 (Pages 206 to 209)



210

212

1 Agostini  
 2 the shots?"  
 3 And he said, "Yeah. You go this  
 4 way and I go this way."  
 5 **Q Anything else?**  
 6 A Alston, the statement that  
 7 Alston gave, the statement that Damon gave.  
 8 Booth gave a statement that Manganiello was  
 9 looking for a gun. And the pizza owner,  
 10 Cartone, overheard Anthony Manganiello  
 11 looking for a gun at his pizza shop, that  
 12 evidence.  
 13 **Q Did you consider the evidence**  
 14 **given by Mr. Huello?**  
 15 A I don't know who he is.  
 16 MS. FROMMER: Do you want to  
 17 represent who he is, because he will be  
 18 better able to answer your question?  
 19 **Q Did you consider any evidence**  
 20 **given by a Verizon worker who was in the**  
 21 **basement at the point in time Mr. Cobb**  
 22 **entered the basement?**  
 23 A What do you mean? I never spoke  
 24 to Huello.  
 25 **Q Did you speak to Cobb?**

211

1 Agostini  
 2 A Yes.  
 3 **Q Did you review DD5's concerning**  
 4 **what Mr. Huello had said?**  
 5 A I need to review them again. He  
 6 didn't say it to me.  
 7 **Q Did you ever call Mr. Huello**  
 8 **asking him to come in and speak to you about**  
 9 **what he saw?**  
 10 A No, because he was already  
 11 interviewed.  
 12 **Q Who interviewed him?**  
 13 A I don't know. I have to look at  
 14 the DD5.  
 15 **Q We will come back to that.**  
 16 **Did you believe Mr. Alston's**  
 17 **story that he had agreed to do a hit for**  
 18 **hire essentially, commit murder for hire?**  
 19 A He never made that statement to  
 20 me.  
 21 **Q What specifically did Mr. Alston**  
 22 **say that caused you to believe that there**  
 23 **was probable cause to arrest Anthony**  
 24 **Manganiello for the murder of Albert Acosta?**  
 25 A Basically he said his story that

1 Agostini  
 2 Parkchester security was looking either for  
 3 a gun for him to make a hit, okay. He  
 4 pointed him out on a book, photo, a book  
 5 photo, okay, and then he gave up Damon.  
 6 **Q Now, did you testify a couple of**  
 7 **seconds ago that Mr. Alston never said to**  
 8 **you that a Parkchester security guard wanted**  
 9 **to hire him to commit a murder?**  
 10 A He never said it to me.  
 11 **Q He never did?**  
 12 A No.  
 13 **Q Let me direct your attention to**  
 14 **Exhibit 22. Can you read the first**  
 15 **paragraph.**  
 16 A So then he did. After reading  
 17 this he did.  
 18 **Q So Mr. Alston did in fact say to**  
 19 **you that a Parkchester security guard wanted**  
 20 **to hire him to commit an act of murder?**  
 21 A Yes, according to this.  
 22 **Q Did you believe him?**  
 23 A Yes.  
 24 **Q Did you arrest him for the**  
 25 **murder, for conspiracy to commit murder?**

213

1 Agostini  
 2 A I didn't have enough. He didn't  
 3 do it.  
 4 **Q Did you arrest him for attempted**  
 5 **murder?**  
 6 A No, because he didn't do it.  
 7 **Q Did you arrest him for**  
 8 **conspiracy?**  
 9 A We don't even know what other  
 10 security guard was he looking for.  
 11 **Q Sir, is it fair to say that you**  
 12 **in part based your decision to arrest Mr.**  
 13 **Manganiello on the word of someone who lied**  
 14 **to you?**  
 15 MS. FROMMER: Objection. You  
 16 can answer.  
 17 A He didn't lie to me, but I  
 18 believed Damon. I believed Damon, and I  
 19 believed Cobb.  
 20 **Q You also mentioned a name Booth;**  
 21 **is that correct?**  
 22 A Yes.  
 23 **Q Do you know if Mr. Booth was**  
 24 **involved in some criminal activity?**  
 25 A I didn't know whether he was

54 (Pages 210 to 213)



214

216

1 Agostini  
 2 involved in criminal activity, but they said  
 3 he was the neighborhood bookie.  
 4 **Q Did they say he was a loan**  
 5 **shark?**  
 6 A I don't know that. Bookie and  
 7 loan shark are two different things.  
 8 **Q One loans money for high**  
 9 **interest, the other takes bets, correct?**  
 10 MS. FROMMER: Objection.  
 11 A I don't know he was a loan  
 12 shark. I just heard he is a neighborhood  
 13 bookie.  
 14 **Q What is your understanding of**  
 15 **what a bookie does?**  
 16 A Takes bets.  
 17 **Q And is that legal or illegal?**  
 18 A It's illegal.  
 19 **Q And after you learned that Mr.**  
 20 **Booth had been involved in this illegal**  
 21 **activity, what if anything did you do?**  
 22 MS. FROMMER: Objection.  
 23 A Learning as in what?  
 24 **Q In other words, did you**  
 25 **investigate Mr. Booth concerning this**

215

1 Agostini  
 2 **illegal activity?**  
 3 A No.  
 4 **Q Why not?**  
 5 A Because I didn't.  
 6 **Q You were a detective, correct?**  
 7 A Yes.  
 8 **Q Is it part of your job to**  
 9 **investigate crimes including bookmaking?**  
 10 A No, not bookmaking. That's  
 11 totally different. That goes into whatever  
 12 that is, vice. They handle cases like that.  
 13 **Q Did you pass Mr. Booth's name**  
 14 **along to vice?**  
 15 A I passed it through SARRS I  
 16 believe, and whatever, HIDTA, whatever. I  
 17 know I probably ran checks on him.  
 18 **Q Did you learn that he was a**  
 19 **known gang member?**  
 20 A Not that I recall, no.  
 21 **Q Did you know that he had**  
 22 **affiliations with organized criminal**  
 23 **families?**  
 24 A That I heard, yes.  
 25 **Q What criminal families was Mr.**

1 Agostini  
 2 **Booth affiliated with?**  
 3 MS. FROMMER: Objection.  
 4 A I don't remember.  
 5 **Q Was it the Genovese family?**  
 6 A I don't remember, sir.  
 7 **Q Mr. Booth worked at the Hunts**  
 8 **Point Fruit Market, correct?**  
 9 MS. FROMMER: Objection.  
 10 A Mr. Booth worked there? I don't  
 11 know whether he worked there or not.  
 12 **Q Was there an element of**  
 13 **organized crime in 2001 that was known to**  
 14 **have controlled the Hunts Point Fruit**  
 15 **Market?**  
 16 A I don't know that.  
 17 **Q What did you hear about Mr.**  
 18 **Booth and his involvement with organized**  
 19 **crime?**  
 20 MS. FROMMER: Objection.  
 21 A The only thing I heard was that  
 22 maybe, maybe he had an uncle that was mobbed  
 23 up in Hunts Point, but that was it.  
 24 **Q Did you ever ask him?**  
 25 A I don't know. I don't know

217

1 Agostini  
 2 whether I asked him or not.  
 3 **Q The possibility that a witness**  
 4 **coming forward on the murder case is maybe**  
 5 **mobbed up, was that an important factor for**  
 6 **you?**  
 7 A No.  
 8 **Q Did you ever consider that maybe**  
 9 **Mr. Booth was involved in the murder of**  
 10 **Albert Acosta?**  
 11 MS. FROMMER: Objection.  
 12 A No.  
 13 **Q Did you ever receive any**  
 14 **information that Mr. Acosta owed Mr. Booth**  
 15 **money?**  
 16 A No.  
 17 **Q Did you ever receive any**  
 18 **information that other security guards**  
 19 **working for Parkchester owed Mr. Booth**  
 20 **money?**  
 21 A No.  
 22 **Q Now, what happened to the SARRS**  
 23 **check that you performed for Mr. Booth, on**  
 24 **Mr. Booth?**  
 25 A Well, it's in the case file.

55 (Pages 214 to 217)

218

220

1 Agostini  
 2 Q Was that documentation also  
 3 lost?  
 4 A Everything. It's in the case  
 5 file.  
 6 Q Was there documentation in that  
 7 SARRS report which indicated that Mr. Booth  
 8 had been involved in criminal activity  
 9 previously?  
 10 MS. FROMMER: Objection.  
 11 A I don't remember, sir.  
 12 Q By the way, did you tell the ADA  
 13 that Mr. Booth was reputed to be a bookie?  
 14 MS. FROMMER: Objection.  
 15 A I believe I did, yes.  
 16 Q Were any charges brought against  
 17 Mr. Booth as a result of his bookmaking  
 18 activity?  
 19 MS. FROMMER: Objection.  
 20 A We can never prove anything with  
 21 him.  
 22 Q Did you try?  
 23 A Did I try proving what? Buying  
 24 or betting with him, no.  
 25 Q Isn't it true in exchange for

219

1 Agostini  
 2 the information he provided in this case Mr.  
 3 Booth was left alone to his criminal  
 4 activity in the vicinity of the 43rd  
 5 Precinct?  
 6 MS. FROMMER: Objection.  
 7 A Left alone, no, sir.  
 8 Q From the point in time that he  
 9 gave you the statement in 2001 until 2004  
 10 when Mr. Manganiello was tried, was Mr.  
 11 Booth ever arrested?  
 12 MS. FROMMER: Objection.  
 13 A No, not that I know of. Not by  
 14 me.  
 15 Q By the way, you say Chris  
 16 Cartone owned a pizzeria, correct?  
 17 A I don't know if he owned it, but  
 18 I guess he was there as manager or whatever,  
 19 whatever it is. I don't know specifically  
 20 if he owned it or not.  
 21 Q Are you aware if Mr. Cartone had  
 22 some employment at the pizzeria?  
 23 A Yes.  
 24 Q Was the pizzeria a known place  
 25 where people dropped numbers?

1 Agostini  
 2 MS. FROMMER: Objection.  
 3 A Sir, I have never been to that  
 4 pizzeria, never to that pizzeria, only to  
 5 pick up and to interview him. Other than  
 6 for me to eat there or do I frequent that  
 7 pizzeria that I would know if they are doing  
 8 numbers in there, no, I have never been to  
 9 that pizzeria.  
 10 Q Have you ever been to the  
 11 pizzeria?  
 12 A Yes.  
 13 Q Is the pizzeria located within  
 14 the vicinity of the 43rd Precinct?  
 15 A Yes.  
 16 Q Had you received information  
 17 that the pizzeria was linked to Mr. Booth's  
 18 gambling operations?  
 19 MS. FROMMER: Objection.  
 20 A No.  
 21 Q Did you ever receive information  
 22 that Mr. Cartone was linked to Mr. Booth's  
 23 gambling operations?  
 24 MS. FROMMER: Objection.  
 25 A No.

221

1 Agostini  
 2 Q What did Mr. Booth say to you?  
 3 A Off memory?  
 4 Q Yes.  
 5 A Basically that he was parked in  
 6 Parkchester by Macy's, and that Manganiello  
 7 approach him and asked him for a rod. And  
 8 he said, "Are you crazy?" You can do  
 9 whatever years, "you can go to jail for  
 10 that."  
 11 Q Did he say it was a fishing rod?  
 12 What did he say?  
 13 A No, a rod.  
 14 Q Do you know what he meant by  
 15 rod?  
 16 A Yes, a gun.  
 17 Q By the way, did you give Mr.  
 18 Manganiello's name to Mr. Booth?  
 19 A Mr. Booth, did I give him the  
 20 name? I don't know. I don't know whether I  
 21 gave him the name or not. I know he picked  
 22 him out of a book.  
 23 Q And did Mr. Booth indicate to  
 24 you that he had sold Mr. Manganiello a gun?  
 25 A No.

56 (Pages 218 to 221)





222

224

1 Agostini  
2 Q Where did you speak to Mr.  
3 Booth?  
4 A I picked up Mr. Booth at the  
5 pizzeria. I don't know what he looked like.  
6 Cartone says, "That's him."  
7 Q What happened after you picked  
8 him up?  
9 A We went to the precinct, and  
10 that's where I spoke to him.  
11 Q Did he speak to you voluntarily?  
12 A Yes.  
13 Q Did you indicate to him there  
14 would be any consequences if he didn't  
15 provide you information?  
16 MS. FROMMER: Objection.  
17 A No, no consequences.  
18 Q Did you tell him you would pass  
19 his name on to organized crime?  
20 A Yes, I would. Yes, I did.  
21 Q Why did you say that?  
22 A Because he had these betting  
23 slips in the back of his pocket.  
24 Q How did you come to learn that?  
25 A Because when I was talking to

223

1 Agostini  
2 him he was very reluctant to talk to me, and  
3 then I saw a knife on his pocket. So I  
4 said, "Do you have a weapon?" So to protect  
5 myself I said, "Come here." So I checked  
6 him, and that was in his back pocket.  
7 Q Where did you frisk him?  
8 A At the precinct.  
9 Q And where in the precinct?  
10 A In the 43rd squad lunchroom.  
11 Q Is that also an interrogation  
12 room?  
13 MS. FROMMER: Objection.  
14 A No, it's a lunchroom.  
15 Q Was he in handcuffs at any  
16 point?  
17 A No.  
18 Q What kind of knife did he have?  
19 A I don't remember, sir.  
20 Q Was possession of a knife at  
21 that time a crime?  
22 A It is, yes.  
23 Q Did you arrest him for  
24 possession of a criminal weapon?  
25 A No.

1 Agostini  
2 Q Why not?  
3 A Because I didn't.  
4 Q Was there a reason why you  
5 didn't enforce the law at this particular  
6 point?  
7 A No.  
8 Q You said you found betting slips  
9 on him. Can you describe what those are?  
10 A All I saw, and I saw them for  
11 the first time, it was a big paper like this  
12 (indicating), and there were names and  
13 numbers and money on whatever. I couldn't  
14 make it out. That's not my expertise.  
15 Q Did you realize this was  
16 something involved in a criminal activity?  
17 A That's what it looked like, yes.  
18 Q Did you ask him?  
19 A Yes, I did.  
20 Q What did he say?  
21 A And he says, "Okay, okay. I'll  
22 tell you. What do you want to know?"  
23 Q So he asked you what do you want  
24 to know?  
25 A Yes.

225



57 (Pages 222 to 225)

226

1 Agostini  
 2 MS. FROMMER: Objection.  
 3 A I would have made inquiries on  
 4 it.  
 5 Q After Mr. Booth gave you the  
 6 information you wanted, did you make  
 7 inquiries on it?  
 8 A I'm not sure whether I did or  
 9 not. I don't think so.  
 10 Q Did you document anywhere in the  
 11 file that you had found possible gambling  
 12 paraphernalia and a knife on Mr. Booth at  
 13 the point in time he was giving you this  
 14 statement?  
 15 MS. FROMMER: Objection.  
 16 A I believe the betting, whatever  
 17 that thing, I put it with the file.  
 18 Q And what happened to that?  
 19 A It disappeared.  
 20 Q Was that with the file when you  
 21 provided it to the ADA?  
 22 A Everything was there.  
 23 Q What about the knife?  
 24 A No, not the knife. He kept the  
 25 knife.

227

1 Agostini  
 2 Q So did you allow this bookmaker  
 3 to walk out of the 43rd Precinct with a  
 4 criminal weapon?  
 5 MS. FROMMER: Objection.  
 6 A Well, he said it was a working  
 7 knife, that he works with a knife. So he  
 8 left, yes.  
 9 Q In your view at the time, was it  
 10 a knife that would fall under the definition  
 11 of dangerous weapon in the penal law?  
 12 MS. FROMMER: Objection.  
 13 A I don't remember the knife, sir.  
 14 I just can't remember the knife.  
 15 Q When you said to Mr. Booth, sir,  
 16 "it's not hard," I want to know, what to the  
 17 best of your recollection were your words?  
 18 A I don't remember. I said this  
 19 is what happened, whatever it is that I  
 20 said, I said I just want to know what  
 21 happened.  
 22 Q When you said "this is what  
 23 happened," what did you mean by that?  
 24 MS. FROMMER: Objection.  
 25 A I don't know what words I used.

228

1 Agostini  
 2 Q Did the words involve the name  
 3 Anthony Manganiello?  
 4 A I don't believe I used his name.  
 5 I don't believe I used his name.  
 6 Q Did you ask him about a  
 7 Parkchester security officer?  
 8 A That could have been it, but I  
 9 can't remember.  
 10 Q Did you mention that in the same  
 11 sentence to him concerning another  
 12 Parkchester security officer being shot?  
 13 MS. FROMMER: Objection.  
 14 A I can't remember.  
 15 Q Where did you speak to Mr. Chris  
 16 Cartone?  
 17 A I spoke to him first at the  
 18 pizzeria, and I believe he was busy. And I  
 19 said, "Do me a favor, just come to the  
 20 precinct tonight before you go home. I need  
 21 to speak to you."  
 22 He said, "okay," and he did  
 23 come.  
 24 Q How was it that you learned that  
 25 Mr. Cartone had some pertinent information?

229

1 Agostini  
 2 A I believe it was through Sal  
 3 Miro.  
 4 Q And what did Mr. Cartone tell  
 5 you?  
 6 A Basically Mr. Cartone said that  
 7 one day he was working at the pizzeria, and  
 8 he mentioned his name, Manganiello, that's  
 9 what he said, came in and was inquiring  
 10 about buying a gun.  
 11 Q Who did he say he was inquiring  
 12 about?  
 13 A About?  
 14 MS. FROMMER: Objection.  
 15 Q Who was he speaking to when he  
 16 was asking about a gun?  
 17 A Just people in the pizzeria.  
 18 Q Did he tell you that Mr.  
 19 Manganiello was walking around the pizzeria  
 20 asking people for a gun?  
 21 MS. FROMMER: Objection.  
 22 A All I know is he said he  
 23 overheard him asking somebody or talking to  
 24 somebody about him buying a gun.  
 25 Q Did Mr. Booth ever recant his

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dale

230

1 Agostini  
2 statement?  
3 A No.  
4 Q Did Mr. Cartone recant his  
5 statement?  
6 A No.  
7 Q Were you aware of any  
8 affiliation or association between Booth and  
9 Alston?  
10 MS. FROMMER: Objection.  
11 A No.  
12 Q Did you put Mr. Cartone's name  
13 into the SARRS inquiry?  
14 A I must have. When you have all  
15 these people you run them through  
16 everything. Do I remember? No, I don't  
17 remember.  
18 Q Where is the background check  
19 that you ran on Mr. Cartone?  
20 A It's with the file.  
21 MS. FROMMER: Objection.  
22 Q Are these documents lost, also?  
23 A Yes.  
24 Q Do you have any recollection of  
25 Mr. Cartone's name coming up as being linked

231

1 Agostini  
2 to organized crime?  
3 MS. FROMMER: Objection.  
4 A Not that I know of, no.  
5 Q And by the way, did you happen  
6 to search Mr. Cartone at all?  
7 A No.  
8 Q Did you threaten to arrest Mr.  
9 Cartone in any way?  
10 A No.  
11 Q When you were speaking to Mr.  
12 Booth, did you indicate to him that if he  
13 didn't provide you the information he might  
14 be facing criminal charges for the homicide  
15 of Acosta?  
16 A No.  
17 Q Did you ever come across any  
18 information that was inconsistent with what  
19 Cobb told you?  
20 A No. Well, yes, there is one DD5  
21 there that someone, I don't know who, I  
22 think Sergeant Hall, whatever, stated that  
23 Manganiello didn't hear the shots.  
24 Q Well, didn't Sergeant Hall also  
25 say that Mr. Cobb said it sounded like he

232

1 Agostini  
2 heard the shots from outside the building?  
3 A Well, he didn't tell me that.  
4 Sergeant Hall -- I know I spoke to Cobb, and  
5 Cobb told me in person that he heard the  
6 shots coming from the basement. He was  
7 walking towards the basement, and as he  
8 opened the door Manganiello was opening the  
9 door at the same time. And he asked  
10 Manganiello, "Did you hear the shots?" And  
11 Manganiello said, "Yes, I heard it. You go  
12 run this way, and I run this way."  
13 Q Did you ever speak to Sergeant  
14 Hall?  
15 A I don't think so.  
16 Q Did you ever come across a DD5  
17 documenting a conversation with Sergeant  
18 Hall?  
19 A Sir, I did a lot of interviews.  
20 I don't know. You have to show it to me.  
21 As far as I recall right now I can tell you  
22 I don't recall, unless you show me  
23 something.  
24 Q By the way, what time did Mr.  
25 Cobb say he heard these shots?

233

1 Agostini  
2 A I can't recall the time.  
3 Q Would it be important to you to  
4 know when Mr. Cobb told you?  
5 A You are asking me by memory, and  
6 I'm telling you I can't remember.  
7 MS. FROMMER: If you would like  
8 to show him something to refresh his  
9 memory feel free.  
10 MR. JOSEPH: Let's have this  
11 marked as 25.  
12 (Document was marked as  
13 Plaintiff's Exhibit 25 for  
14 identification, as of this date.)  
15 Q Sir, I show you what has been  
16 marked as Exhibit 25. Do you recognize this  
17 document?  
18 And again, for the record, there  
19 is a number on top and highlighted portions.  
20 The record came to me in this condition.  
21 MS. FROMMER: And red  
22 underlines.  
23 MR. JOSEPH: Red underlines.  
24 Q Have you seen this document  
25 before?

59 (Pages 230 to 233)





234

1 Agostini  
 2 A Yes, I have seen this.  
 3 Q Were you aware that Mr. Ohle had  
 4 given a statement that it sounded like to  
 5 him that shots came from outside, and he  
 6 gave that statement on the day of the  
 7 incident?  
 8 MS. FROMMER: Objection. You  
 9 can answer.  
 10 A Yes, I have seen this before.  
 11 Q Were you aware that Mr. Cobb  
 12 immediately after the shooting occurred gave  
 13 a statement in which he said it sounded like  
 14 the shots came from outside to Sergeant  
 15 Ohle?  
 16 MS. FROMMER: Objection.  
 17 A Well, that's what this statement  
 18 says, that Sergeant Ohle says, that's what  
 19 Sergeant Ohle says that Cobb said. I  
 20 interviewed Cobb, and he didn't say what he  
 21 said here.  
 22 Q Did you interview Sergeant Ohle?  
 23 A No, not that I know of. I don't  
 24 know.  
 25 Q Would you give some weight to

235

1 Agostini  
 2 what the sergeant of a special patrol  
 3 officer's unit says?  
 4 MS. FROMMER: Objection.  
 5 A Give some weight? I don't know.  
 6 They're in the same Parkchester unit.  
 7 People say things to protect people.  
 8 Q What do you mean by that?  
 9 A What?  
 10 Q What do you mean by that?  
 11 A I don't know. It's his  
 12 sergeant.  
 13 Q Are you saying you believed  
 14 Sergeant Ohle was being untruthful to  
 15 protect Officer Manganiello?  
 16 MS. FROMMER: Objection. You  
 17 can answer.  
 18 A Not to protect Manganiello, but  
 19 they are officers involved here in his unit,  
 20 okay. I don't know what he -- I know Cobb  
 21 didn't say that to me.  
 22 Q Did you ask Sergeant Ohle if  
 23 Cobb made a statement which was inconsistent  
 24 with what he was telling you?  
 25 MS. FROMMER: Objection.

236

1 Agostini  
 2 A I don't think I spoke to  
 3 Sergeant Ohle.  
 4 Q Was there a reason you didn't  
 5 speak to Sergeant Ohle?  
 6 A I just wanted to speak to Cobb.  
 7 Q I'm showing you Exhibit No. 4.  
 8 Have you seen this document before?  
 9 A I know I seen it before, yes. I  
 10 just have to read it.  
 11 Q Take your time.  
 12 A Yes.  
 13 Q At the point in time you  
 14 believed Mr. Cobb's statement provided  
 15 probable cause to believe Mr. Manganiello  
 16 was involved in the murder of Albert Acosta,  
 17 were you aware that Mr. Huello had given the  
 18 statement that's before you in Exhibit 4?  
 19 A Yes.  
 20 Q At any time did you attempt to  
 21 interview Mr. Huello?  
 22 A He was interviewed already by  
 23 Detective Martinez.  
 24 Q And you trusted Detective  
 25 Martinez; is that correct?

237

1 Agostini  
 2 A Yes, of course.  
 3 Q He is a good detective?  
 4 A Right.  
 5 Q He writes down things  
 6 accurately?  
 7 A I would hope so.  
 8 Q According to what the notes that  
 9 Detective Martinez took, Mr. Huello was  
 10 present when Mr. Cobb entered the basement,  
 11 correct?  
 12 MS. FROMMER: Objection.  
 13 According to the DD5.  
 14 Q According to the DD5.  
 15 A According to the DD5, yes.  
 16 Q And according to the DD5, Mr.  
 17 Huello didn't see Officer Manganiello; is  
 18 that correct?  
 19 A Who are you saying?  
 20 Q According to the DD5, Mr. Huello  
 21 did not see Anthony Manganiello in the  
 22 basement, correct?  
 23 A Correct.  
 24 Q And the room where Mr. Huello  
 25 says he was was directly across from the

60 (Pages 234 to 237)

238

240

1 Agostini  
2 room where Mr. Acosta was later found,  
3 correct?

4 MS. FROMMER: Objection.

5 A That's correct.

6 Q And Mr. Huello states that he  
7 didn't hear any shots; is that correct?

8 A That's what he states.

9 Q And did that raise any concerns  
10 to you as to the reliability of Mr. Cobb's  
11 statement?

12 A No, sir, because Mr. Huello came  
13 after the shots, not before.

14 Q So did that --

15 A Because when he was going to go  
16 into the basement and he saw him coming and  
17 he told him to go this way and that way, Mr.  
18 Cobb did go that way. He didn't enter the  
19 basement.

20 Q Are you sure about that?

21 A That's what he stated to me.

22 Q Mr. Cobb told you after he sees  
23 Mr. Manganiello he left the vicinity and  
24 then came back?

25 A He said he walked up the street,

239

1 Agostini  
2 but then came back saying like there is no  
3 cops coming, you know.

4 Q Did you make a note of that?

5 A Did I make a note of that? I  
6 know I interviewed him.

7 Q Did you write it down?

8 A I probably did. It's probably  
9 with the file.

10 Q Did you put it in the DD5?

11 A I don't know. I don't think so.

12 Q Is that an important piece of  
13 information?

14 A Yes. He was already  
15 interviewed.

16 Q Did you ever prepare a DD5  
17 concerning an interview with Walter Cobb?

18 A I don't know. You'll have to  
19 show me. I don't remember.

20 Q I am going to show you what has  
21 been marked as Plaintiff's Exhibit 1.  
22 According to the DD5 in front of you in  
23 Exhibit 1, did Mr. Cobb tell your fellow  
24 detective, Detective Martinez, that he  
25 walked up the block and came back, or did he

1 Agostini  
2 tell Detective Martinez that as the door was  
3 closing after Mr. Manganiello left he  
4 grabbed the door to keep it from closing and  
5 entered?

6 MS. FROMMER: Objection.

7 A That's what he is saying to

8 Detective Martinez, yes.

9 Q And there is no reason for  
10 Detective Martinez to write down something  
11 incorrectly, correct?

12 MS. FROMMER: Objection.

13 A Correct.

14 Q Did it concern you that Mr. Cobb  
15 was telling you a different story than he  
16 had told Detective Martinez?

17 MS. FROMMER: Objection.

18 A Well, I interviewed Cobb, okay,  
19 and I don't think this either going through  
20 the door -- when I interviewed him he says  
21 that he told him to go that way, and Cobb  
22 said, "I started to walk up, but then I  
23 stopped." He didn't see anything else, so  
24 he came back. He went through the door and  
25 he continued his work. He didn't mention

241

1 Agostini  
2 anything about the door closing or anything  
3 like that to me.

4 Q Did the fact that Mr. Cobb had  
5 given inconsistent statements to you and to  
6 Detective Martinez cause you any concern?

7 MS. FROMMER: Objection.

8 A To me the door thing, that's not  
9 a big deal to me.

10 Q Is it a big deal that Mr. Cobb  
11 immediately after allegedly seeing Mr.  
12 Manganiello leave the building entered the  
13 basement and Mr. Huello was already in the  
14 basement at the time and didn't hear any  
15 shots? Is that significant?

16 MS. FROMMER: Objection.

17 A It was after, correct? He  
18 noticed Mr. Huello after the shots, not  
19 before.

20 Q Sir, according to the statement  
21 that Mr. Huello gave to Detective Martinez  
22 in Exhibit No. 4, Mr. Huello states that he  
23 was in the basement at the point in time  
24 that Cobb entered the basement, correct?

25 MS. FROMMER: Objection.

61 (Pages 238 to 241)



242

1 Agostini  
 2 A At what time?  
 3 Q Look at the DD5.  
 4 A At what time did he come into  
 5 the basement? It could have been -- when he  
 6 came to the basement it was after the shots.  
 7 Q Sir, according to --  
 8 A When he told him to go that way  
 9 and he started walking that way and he came  
 10 back to the basement and opened the basement  
 11 and he went into the basement, that's when  
 12 the Verizon guy was there. That was after  
 13 the shots.  
 14 Q Sir, anywhere, is there any  
 15 written record that Cobb told you, ever  
 16 stated to anybody that after he heard the  
 17 shots he left the area and then came back?  
 18 MS. FROMMER: Objection.  
 19 A I don't know that. I don't know  
 20 if -- I know he told me that. I don't know  
 21 whether he told that to anybody else.  
 22 Q Would you put that in a DD5 if  
 23 he told you that?  
 24 A Sometimes no. Sometimes he was  
 25 already interviewed. I mean him walking

243

1 Agostini  
 2 over there and coming back, I don't think  
 3 that's a big deal.  
 4 Q Sir, if Mr. Huello entered the  
 5 basement prior to Mr. Cobb being on the  
 6 scene and if he was there continuously until  
 7 Cobb arrives and he doesn't hear any shots,  
 8 is that significant to you?  
 9 MS. FROMMER: Objection.  
 10 A I don't know if he was there or  
 11 not. He could have came in through the  
 12 back. I don't know.  
 13 Q Did you make any attempt to  
 14 interview Mr. Huello to find out?  
 15 A Well, no. He was interviewed  
 16 already.  
 17 Q Sir, what time does Mr. Cobb say  
 18 he entered the basement?  
 19 A I don't remember.  
 20 Q If you look at his statement to  
 21 Detective Martinez, does that refresh your  
 22 recollection?  
 23 A He says 10:10.  
 24 Q Did you ever try to find out  
 25 what time Mr. Huello actually entered the

dela

244

1 Agostini  
 2 basement?  
 3 A If it's not there I can't  
 4 remember.  
 5 Q Did you ever speak with an SPO  
 6 Nieves?  
 7 A I spoke to a lot of SPO's. I  
 8 don't know who is who.  
 9 Q Did you ever let Lieutenant  
 10 Scott know that you found gambling  
 11 paraphernalia and a knife on Mr. Booth?  
 12 MS. FROMMER: Objection.  
 13 A Did I let him know? I let him  
 14 know everything about the case.  
 15 Q Did you also let Lieutenant  
 16 Scott know that information provided by  
 17 Terrence Alston turned out to be false?  
 18 MS. FROMMER: Objection. You  
 19 can answer.  
 20 A Of course.  
 21 Q Did he authorize you to continue  
 22 speaking with Terrence Alston or using him  
 23 as an informant on this investigation?  
 24 A He doesn't have to authorize me  
 25 to do anything. It's my case.

245

1 Agostini  
 2 MS. FROMMER: Objection.  
 3 Q Did he express any concerns to  
 4 you?  
 5 A No.  
 6 Q Did he express any concern about  
 7 you not providing the gambling paraphernalia  
 8 to the vice squad?  
 9 MS. FROMMER: Objection.  
 10 A No.  
 11 Q Did he approve of what you were  
 12 doing?  
 13 MS. FROMMER: Objection.  
 14 A I don't know whether he approved  
 15 or not. I can't say he was jumping up for  
 16 joy. I don't know.  
 17 Q By the way, before you signed  
 18 the felony complaint, did you discuss with  
 19 any of your supervisors what evidence there  
 20 was to provide probable cause against  
 21 Anthony Manganiello for the homicide of  
 22 Albert Acosta?  
 23 MS. FROMMER: Objection.  
 24 A I can't remember, sir.  
 25 Q Did you ever advise ADA Scaccia

62 (Pages 242 to 245)



250

252

1 Agostini  
 2 phone, that he really didn't see who shot  
 3 the person, who shot the person.  
 4 **Q Did you take a written statement**  
 5 **from him?**  
 6 A No. I just made a DD5 on it.  
 7 **Q Did that sound believable to you**  
 8 **at the time?**  
 9 A Yes.  
 10 **Q Did you do any further**  
 11 **investigation into this individual?**  
 12 A Might have. I don't know  
 13 whether I did a check on him or not, but I  
 14 wouldn't know. I don't know.  
 15 **Q Would you consider the statement**  
 16 **given to you by that cab driver and the**  
 17 **statement given to you by Mr. Vasquez to be**  
 18 **inconsistent?**  
 19 MS. FROMMER: Objection.  
 20 A Inconsistent, no. What do you  
 21 mean inconsistent?  
 22 **Q In other words, did he tell the**  
 23 **gentleman, did the cab driver tell you he**  
 24 **was speaking on the phone saying he**  
 25 **witnessed the incident, then he told you a** 251

1 Agostini  
 2 **different story?**  
 3 A Yes. He basically said what the  
 4 cab driver said, but he said that it was a  
 5 lie. He was making things up over the  
 6 phone.  
 7 **Q Did that raise any suspicions**  
 8 **for you?**  
 9 A No.  
 10 MR. JOSEPH: Let's have this  
 11 marked as the next exhibit.  
 12 (Document was marked as  
 13 Plaintiff's Exhibit 28 for  
 14 identification, as of this date.)  
 15 **Q Sir, I'm showing you what has**  
 16 **been marked as Exhibit 28. I will ask you**  
 17 **if you have ever seen this document?**  
 18 MS. FROMMER: For the record,  
 19 that's Bates stamped 801.  
 20 A Okay.  
 21 **Q Have you seen this document**  
 22 **before?**  
 23 A Yes.  
 24 **Q Is this a document that you**  
 25 **utilized as part of your investigation into**

1 Agostini  
 2 **the homicide of Albert Acosta?**  
 3 A Yes.  
 4 **Q And according to this document,**  
 5 **SPO Nieves went to get the key for Mr.**  
 6 **Huello, the Verizon employee, at about 9:25,**  
 7 **correct?**  
 8 MS. FROMMER: Objection.  
 9 A He was directed to pick up, yes.  
 10 **Q And how far is the main security**  
 11 **office to 1700 Metropolitan Avenue?**  
 12 MS. FROMMER: Objection.  
 13 A It's far. I don't know how far.  
 14 By miles I don't know, but it's not across  
 15 the street.  
 16 **Q Are you aware that Mr. Nieves**  
 17 **was using a vehicle?**  
 18 MS. FROMMER: Objection.  
 19 A No, I don't.  
 20 **Q By the way, did Mr. Huello**  
 21 **remain at the scene of the basement, or did**  
 22 **he go with Mr. Nieves?**  
 23 A I didn't talk to him. I didn't  
 24 talk to Huello.  
 25 **Q Did this ever raise any concerns** 253

1 Agostini  
 2 **to you that the information that Mr. Cobb**  
 3 **was giving you was accurate?**  
 4 MS. FROMMER: Objection.  
 5 A I always thought Mr. Cobb was  
 6 accurate, always.  
 7 **Q But did you look at any of the**  
 8 **other information or documents in your file**  
 9 **which may have indicated otherwise?**  
 10 MS. FROMMER: Objection.  
 11 A No.  
 12 **Q By the way, was a Band-Aid taken**  
 13 **off Mr. Manganiello's hand?**  
 14 A I saw a Band-Aid. I don't know  
 15 if it was taken or who took it.  
 16 **Q Do you know if any tests were**  
 17 **done on it?**  
 18 A I don't remember if there were  
 19 tests made or what it came back to. I can't  
 20 remember that.  
 21 **Q By the way, did you ever tell**  
 22 **the ADA that there was this other person**  
 23 **riding in a cab talking about the murder?**  
 24 A Sir, she has all the DD5's. I  
 25 probably told her. I don't know if I -- you

64 (Pages 250 to 253)



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260

1 Agostini  
2 me.  
3 **Q Why don't you take a look at**  
4 **Plaintiff's Exhibit 29.**  
5 MS. FROMMER: Again, this is a  
6 document that has not only yellow  
7 highlighting but handwritten notations  
8 and circles in the upper right-hand  
9 corner.  
10 **Q Sir, is this a document that you**  
11 **created?**  
12 A Yes.  
13 **Q Can you tell me what part of**  
14 **that document you created?**  
15 A Which part?  
16 **Q Sir, apart from the yellow**  
17 **highlights and the statement "two weeks**  
18 **later," did you create the rest of the**  
19 **information on this document, except for**  
20 **what I just said?**  
21 A Yes.  
22 **Q Now, did PO's Rodriguez and**  
23 **Ortiz change their story at all when they**  
24 **spoke with you on March 1, 2001?**  
25 MS. FROMMER: Objection.

1 Agostini  
2 A No, I didn't question them on  
3 that.  
4 **Q Did you give any consideration**  
5 **to the fact that Officers Ortiz and**  
6 **Rodriguez told Detective Martinez on the day**  
7 **of the incident that Officer Manganiello**  
8 **seemed perfectly normal?**  
9 MS. FROMMER: Objection.  
10 A Why wouldn't he be normal?  
11 **Q Sir, did you give that fact any**  
12 **consideration?**  
13 MS. FROMMER: Objection. You  
14 can answer.  
15 A No, sir. This call if it did  
16 come it came in before the shooting, so he  
17 would be calm.  
18 **Q Sir, you made a point in**  
19 **Exhibit No. 29 to write down that the**  
20 **officers did not see Mr. Manganiello leave**  
21 **the building; is that correct?**  
22 MS. FROMMER: Objection.  
23 A Correct.  
24 **Q Did that statement in your eyes**  
25 **support what Mr. Cobb was saying?**

259

261



66 (Pages 258 to 261)

262

264

1 **Agostini**  
 2 MS. FROMMER: Objection.  
 3 A Well, it didn't support  
 4 anything. It was just that they didn't see  
 5 him leave the building.  
 6 **Q Now, if they did –**  
 7 A That it could be a possibility  
 8 that he is still in the building or he is  
 9 somewhere.  
 10 **Q But if he did leave the**  
 11 **building, then is it fair to say that it**  
 12 **makes it less likely that he's still in the**  
 13 **building?**  
 14 MS. FROMMER: Objection.  
 15 A No. He could come back.  
 16 **Q Sir, do you have any witness who**  
 17 **said that they saw Mr. Manganiello reenter**  
 18 **the building?**  
 19 A No.  
 20 **Q By the way, what date did you**  
 21 **interview Officers Ortiz and Rodriguez?**  
 22 A On this one, it was March 1,  
 23 2001.  
 24 **Q And did you take any handwritten**  
 25 **notes about what they said?**

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1 **Agostini**  
 2 A I probably did.  
 3 **Q What happened to those**  
 4 **handwritten notes?**  
 5 A That's with the case.  
 6 **Q Do you know where they are**  
 7 **presently?**  
 8 A They are missing.  
 9 MR. JOSEPH: I think that's all  
 10 I have.  
 11 MS. FROMMER: Let's take a few  
 12 minutes.  
 13 (Whereupon, a recess was taken.)  
 14 MS. FROMMER: I have nothing.  
 15 (Time noted: 3:27 p.m.)  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1  
 2 **ACKNOWLEDGMENT**  
 3  
 4 UNITED STATES DISTRICT COURT)  
 5 ss:  
 6 SOUTHERN DISTRICT OF NEW YORK)  
 7  
 8 I, DET. LUIS AGOSTINI, hereby  
 9 certify that I have read the transcript of  
 10 my testimony taken under oath in my  
 11 deposition of DECEMBER 20, 2007; that the  
 12 transcript is a true, complete and correct  
 13 record of what was asked, answered and said  
 14 during this deposition, and that the answers  
 15 on the record as given by me are true and  
 16 correct.  
 17  
 18  
 19 DET. LUIS AGOSTINI  
 20  
 21 Subscribed and sworn to  
 22 before me this day  
 23 of , 2008.  
 24  
 25 **NOTARY PUBLIC**

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84

1 Agostini  
 2 I'm not going to write what everybody else  
 3 says, you know, between me and him.  
 4 **Q Well, sir, were you a detective**  
 5 **assigned to the investigation of the**  
 6 **homicide of Albert Acosta?**  
 7 **A No. Detective Abate was.**  
 8 **Q I didn't ask you if you were a**  
 9 **lead. I asked you if you were a detective**  
 10 **assigned to that.**  
 11 **MS. FROMMER: You can answer if**  
 12 **you were a detective assigned to the**  
 13 **case.**  
 14 **A I was assisting.**  
 15 **Q As part of being an assistant,**  
 16 **was it part of your job to document**  
 17 **evidence?**  
 18 **MS. FROMMER: Objection.**  
 19 **A Yes.**  
 20 **Q Did you ever take any**  
 21 **handwritten notes stating that a lawyer**  
 22 **said, that Mr. Manganiello's lawyer said,**  
 23 **"Was it intentional?"**  
 24 **A I can't remember whether I took**  
 25 **one or not.**

81

83

1 Agostini  
 2 **Q Sir, do you know what a 71030**  
 3 **notice is?**  
 4 **A No.**  
 5 **Q Are you aware that there is a**  
 6 **disclosure that a district attorney's office**  
 7 **has to make to a defendant identifying what**  
 8 **statements are attributed to him?**  
 9 **MS. FROMMER: Are you asking**  
 10 **whether he is familiar with the**  
 11 **practices of the Bronx District**  
 12 **Attorney's office?**  
 13 **MR. JOSEPH: Yes.**  
 14 **MS. FROMMER: You can answer if**  
 15 **you can, Detective.**  
 16 **A Are they supposed to give**  
 17 **evidence?**  
 18 **MS. FROMMER: No. Are you aware**  
 19 **of the practices and procedures of the**  
 20 **Bronx District Attorney's office?**  
 21 **THE WITNESS: No.**  
 22 **Q Sir, do you know of any reason**  
 23 **why the district attorney would not disclose**  
 24 **that statement had it been made?**  
 25 **MS. FROMMER: Objection. I am**

1 Agostini  
 2 going to instruct him not to answer  
 3 questions about what an attorney's  
 4 mindset is or is not.  
 5 **MR. JOSEPH: Let's have this**  
 6 **marked, a two-page document.**  
 7 **(Two-page document was marked as**  
 8 **Plaintiff's Exhibit 15 for**  
 9 **identification, as of this date.)**  
 10 **Q Sir, I show you what has been**  
 11 **marked as Exhibit No. 15.**  
 12 **MS. FROMMER: This was disclosed**  
 13 **to me?**  
 14 **MR. JOSEPH: Yes.**  
 15 **Q Sir, do you recognize that**  
 16 **document?**  
 17 **A No, I do not.**  
 18 **Q Sir, did you tell any of the**  
 19 **assistant district attorneys that Anthony**  
 20 **Manganiello had said to you that at**  
 21 **12:10 p.m., "I was at the oval when the call**  
 22 **came over"?**  
 23 **A I don't remember that, no.**  
 24 **Q Did you inform the assistant**  
 25 **district attorney of everything that Anthony**

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1 Agostini  
 2 Manganiello had said to you?  
 3 **A Yes.**  
 4 **Q Now, where did you go after**  
 5 **Anthony Manganiello's brother left the**  
 6 **precinct?**  
 7 **A Stayed at the precinct.**  
 8 **Q Did you stay at the precinct**  
 9 **until your tour was over that day?**  
 10 **A I'm not sure. I can't remember.**  
 11 **Q At any time, did you have a**  
 12 **conversation in which Anthony Manganiello's**  
 13 **brother, Mario Manganiello, was mentioned?**  
 14 **MS. FROMMER: Objection. Could**  
 15 **you repeat that, please.**  
 16 **Q Did you have a conversation with**  
 17 **any other detectives or your supervisor**  
 18 **discussing Mario Manganiello, Anthony**  
 19 **Manganiello's brother?**  
 20 **MS. FROMMER: At any time?**  
 21 **MR. JOSEPH: On February 12,**  
 22 **2001.**  
 23 **A Yes.**  
 24 **Q What was said?**  
 25 **A Basically when we were at the**

22 (Pages 82 to 85)



86

88

1 Agostini  
2 precinct something about a call came up that  
3 his brother, I guess his car was in  
4 Parkchester and his brother was seen by  
5 Parkchester, and there was a foot post,  
6 meaning a cop guarding the car, and when his  
7 brother saw the cop he fled, the brother  
8 fled in a car. That's what was said.  
9 **Q In whose car did he flee?**  
10 A I don't know. I don't know  
11 whose car he fled in.  
12 **Q So you are saying there was a**  
13 **uniformed officer from the 43rd Precinct**  
14 **guarding Anthony Manganiello's car in**  
15 **Parkchester, correct?**  
16 A That's correct.  
17 **Q Do you know how they saw or**  
18 **identified Mario Manganiello?**  
19 A No, I don't.  
20 **Q Was he operating the vehicle at**  
21 **the time?**  
22 A I believe he was in a vehicle.  
23 **Q When he saw the cop at**  
24 **Parkchester, what do you mean he fled?**  
25 A My understanding, because I

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1 Agostini  
2 wasn't there, my understanding was that I  
3 don't know whether he was going to approach  
4 the car or not, but the foot post came up.  
5 **Q What do you mean foot post?**  
6 A Police uniform guarding the car.  
7 When he came across and Mario saw the foot  
8 post there he went to his car and fled.  
9 **Q So is it your testimony that**  
10 **Mario was actually outside of his vehicle?**  
11 A I wasn't there.  
12 **Q It's your testimony that it was**  
13 **relayed to you –**  
14 A I don't know whether he was out  
15 of his vehicle or not.  
16 **Q I asked you what was relayed to**  
17 **you.**  
18 A That wasn't relayed to me.  
19 **Q What information if any was**  
20 **relayed to you?**  
21 A Just what I just said.  
22 **Q Who was present with you when**  
23 **that information was relayed to you?**  
24 A Well, that came over basically  
25 the radio, and I know Detective Shawn Abate

1 Agostini  
2 was at the precinct and I was at the  
3 precinct. That's all I can remember.  
4 **Q What if anything did Shawn Abate**  
5 **say concerning Mario Manganiello?**  
6 A I don't know what he said.  
7 **Q Did you or Shawn Abate have any**  
8 **conversations with Lieutenant Scott**  
9 **concerning the presence of Mr. Mario**  
10 **Manganiello somewhere around Anthony**  
11 **Manganiello's car?**  
12 A I don't remember that.  
13 **Q Do you have a recollection of**  
14 **anyone ordering that Mario Manganiello be**  
15 **stopped?**  
16 MS. FROMMER: Objection.  
17 A I don't have a recollection of  
18 that.  
19 **Q Do you know if Mario Manganiello**  
20 **was stopped and detained –**  
21 MS. FROMMER: Objection.  
22 **Q – on February 12, 2001?**  
23 A I don't know whether he was  
24 stopped and detained, but he was brought  
25 back to the precinct.

89

1 Agostini  
2 **Q Do you know whose decision it**  
3 **was to bring Mario Manganiello back to the**  
4 **precinct?**  
5 A I do not know.  
6 **Q And by the way, did Shawn Abate**  
7 **bring Mario Manganiello back to the**  
8 **precinct?**  
9 A Shawn Abate was in the 43rd  
10 Precinct with me.  
11 **Q At the point in time that the**  
12 **uniformed patrols brought Mario Manganiello**  
13 **back?**  
14 MS. FROMMER: Objection. He  
15 said he doesn't know who brought him  
16 back.  
17 **Q At the point in time when**  
18 **somebody brought Mario Manganiello back to**  
19 **the precinct, was Shawn Abate sitting in the**  
20 **43rd Precinct with you?**  
21 A He was at the 43rd Precinct with  
22 me.  
23 **Q How about Lieutenant Scott, was**  
24 **Lieutenant Scott also with you at the point**  
25 **in time that somebody brought Mario**

23 (Pages 86 to 89)